Rel: 12/19/2014

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2014-2015

1110738

Alabama Mutual Insurance Corporation

v.

City of Fairfield et al.

Appeal from Lamar Circuit Court
(CV-10-1)

On Return to Remand

MAIN, Justice.

This is the second time this matter has been before this Court. In Alabama Mutual Insurance Corp. v. City of Vernon, [Ms. 1110738, October 11, 2013] ___ So. 3d ____ (Ala. 2013), Alabama Mutual Insurance Corporation ("AMIC") appealed from

the trial court's order certifying a class in the action filed by the City of Vernon ("Vernon") and a class of similarly situated entities that had purchased uninsured-motorist/underinsured-motorist coverage ("UM/UIM coverage") from AMIC.[1] Vernon was the original class representative; its claims were straightforward. Vernon claimed that, in 2005, AMIC "'revis[ed] its Alabama Uninsured Motorist Coverage Form to exclude employees from collecting both Workers Compensation, which would be the employees' sole remedy, and Uninsured Motorist benefits when they were involved in an automobile accident.'" Alabama Mut. Ins. Corp., ___ So. 3d at ____ (quoting the trial court's class-certification order). AMIC's revision of its UM/UIM coverage form, Vernon argued, "'rendered Vernon's UM/UIM coverage illusory[2] and breached AMIC's contract to provide UM/UIM insurance'" because, according to Vernon, "'it contracted for UM/UIM insurance and

[1]AMIC "is a non-profit, mutual insurance company that insures municipalities and governmental bodies throughout Alabama." AMIC's supplemental brief, at 7.

[2]"'Coverage is illusory "[w]hen limitations or exclusions completely contradict the insuring provisions," and such "coverage" is not countenanced in this State.'" Alabama Mut. Ins. Corp., ___ So. 3d at ____ (quoting the trial court's class-certification order).

paid premiums for UM/UIM coverage but received no actual UM/UIM coverage because AMIC excluded the only individuals who had a realistic possibility to collect UM/UIM benefits -- municipal employees and volunteers.'" ____ So. 3d at ____ (quoting the trial court's class-certification order).

As noted, Vernon was the original class representative; however, after AMIC filed its notice of appeal from the trial court's class-certification order, Vernon settled its claims against AMIC and withdrew as the class representative. Because there was no longer a representative to "fairly and adequately protect the interests of the class," Rule 23(a), Ala. R. Civ. P., this Court remanded the cause to the trial court, allowing 120 days for a new class representative to be substituted for Vernon. Alabama Mut. Ins. Corp., ___ So. 3d at ____. On remand, the trial court timely entered an order substituting the City of Fairfield ("Fairfield") for Vernon as the class representative.

This Court allowed the parties to submit supplemental briefs on return to remand. Upon review of the parties' arguments in those briefs, it has become clear to this Court that there exists a fatal jurisdictional defect in this case.

Specifically, the trial court is without subject-matter jurisdiction over this dispute; initial jurisdiction over this dispute properly lies with the Alabama Department of Insurance and its commissioner. As explained more fully below, we must vacate the trial court's judgment certifying the class and dismiss this appeal for lack of subject-matter jurisdiction.

This Court's decision in Ex parte Cincinnati Insurance Co., 51 So. 3d 298 (Ala. 2010), is highly instructive and on point with the matter now before us. In Ex parte Cincinnati Insurance Co., Ray Peacock filed a putative class action against Cincinnati Insurance Company ("Cincinnati"), alleging:

> "[B]ecause an insured may stack a maximum of three UM coverages per loss, both by statute and by the terms of Cincinnati's standard policy forms, UM coverage for more than three vehicles under a multi-vehicle policy -- e.g., UM coverage for four, five, or six vehicles -- is 'unnecessary, illusory, and provides no benefit to the purchaser of the policy.' Peacock alleged that Cincinnati 'engages in a wide-spread and ongoing practice of imposing premiums for additional UM coverages on additional vehicles (i.e., beyond three (3)) when issuing multi-vehicle policies in Alabama, despite the fact that an insured could never utilize the additional UM coverages.' (Emphasis in original.) 'Thus,' Peacock alleged, Cincinnati 'overcharges for UM coverage it knows it will never have to provide.'"

51 So. 3d at 300-01. Peacock's complaint sought damages for himself and the putative class in the form of "'restitution or

disgorgement of monies paid for the [allegedly] unnecessary and illusory UM coverage.'" Id. at 301 (quoting complaint).

Cincinnati moved to dismiss Peacock's action for lack of subject-matter jurisdiction. Specifically, Cincinnati argued

> "that the Commissioner of Insurance ('the commissioner') and the Alabama Department of Insurance ('the Department') have broad authority over the matters made the subject of Peacock's complaint; that Peacock had failed to exhaust his administrative remedies; and that Peacock's claims were barred by the filed-rate doctrine."

Ex parte Cincinnati, 51 So. 3d at 301. Cincinnati supported its motion with the affidavit of Myra Frick, a rate manager with the Department. In her affidavit, Frick stated, among other things, that the Department had approved Cincinnati's rates for and the forms related to UM coverage. Frick further stated that, by approving Cincinnati's rates and forms, the Department had determined that the rates and forms were not unreasonably high, inadequate, discriminatory, or misleading. Id. The trial court denied Cincinnati's motion to dismiss. Cincinnati petitioned this Court for a writ of mandamus directing the trial court to vacate its order denying the motion to dismiss and to enter an order granting its motion to dismiss.

In its mandamus petition, Cincinnati argued that the trial court lacked subject-matter jurisdiction over Peacock's claims based on both the "filed-rate doctrine" and on Peacock's failure to pursue administrative remedies through the commissioner and the Department. In his answer, Peacock argued that the filed-rate doctrine did not apply to his claims and that he was not required to pursue administrative remedies. Peacock also argued that he was not challenging Cincinnati's rate calculations or its premiums for UM coverage; rather, Peacock argued, he was challenging Cincinnati's "business practice" of requiring insureds who desired multi-vehicle policies to accept UM coverage for either all or none of the insureds' vehicles. In addressing the parties' arguments, this Court first undertook an extensive examination of the applicable statutes and caselaw:

> "I. The Statutory Authority of the Commissioner
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> "....
>
> "The Insurance Code grants the commissioner the authority to enforce the statutes and regulations governing insurance providers in Alabama. See § 27-2-7, Ala. Code 1975. Particularly, the commissioner, and under the commissioner's authority, the Department, has the authority to regulate insurance rates and forms. See, e.g., §§

27-2-7, 27-2-8, 27-13-1 et seq., 27-14-8, and 27-14-9, Ala. Code 1975.

"UM insurance is a form of casualty insurance and is, therefore, governed by Chapter 13, Article 3, of the Insurance Code. See §§ 27-5-6(a)(1) and 27-13-61, Ala. Code 1975. That article requires insurers to 'make rates that are not unreasonably high or inadequate for the safety and soundness of the insurer and which do not unfairly discriminate between risks in this state....' § 27-13-65, Ala. Code 1975. Insurers must submit all rates and rating plans to the Department before using or applying any rates. § 27-13-67, Ala. Code 1975. Section 27-13-68, Ala. Code 1975, grants the commissioner the authority and responsibility to examine the rates and the rating plans submitted to determine whether they comply with § 27-13-65. Under § 27-13-68, the commissioner has the authority to order that noncompliant rating plans be altered. Additionally, § 27-13-68 grants the commissioner the authority to determine whether rating plans that have been previously approved 'provide for, result in or produce rates which are unreasonable or inadequate or which discriminate unfairly between risks in this state' and to order insurers to alter any rating plan the commissioner determines does so.

"Once the commissioner approves a rate or rating plan, the Insurance Code prohibits the insurer from deviating from that plan. See § 27-13-67 ('From and after the date of the filing of such rating plans, every insurer shall charge and receive rates fixed or determined in strict conformity therewith, except as in this article otherwise expressly provided.'); § 27-13-76 ('No insurer, or employee thereof, and no broker or agent shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the respective rating systems on file with, and approved by, the commissioner.'). Insurers may alter rates and rate plans only with the approval of the commissioner in accordance with

procedures established in § 27-13-76, Ala. Code 1975. Furthermore, the Insurance Code prohibits insurers from reducing premiums except in accordance with rating systems approved by the commissioner. § 27-12-14(a), Ala. Code 1975.

"The Insurance Code also grants the commissioner authority to regulate the insurance contract. Particularly, § 12-14-8, Ala. Code 1975, requires that all insurance policies, application forms, contracts, printed riders, endorsement forms, and forms of renewal certificates be approved by the commissioner. Section 27-14-9, Ala. Code 1975, authorizes the commissioner to disapprove any such form if the form:

> "'(1) Is in any respect in violation of, or does not comply with, [the Insurance Code];
>
> "'(2) Contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract;
>
> "'...; [or]
>
> "'(5) Contains provisions which are unfair, or inequitable, or contrary to the public policy of this state or which would, because such provisions are unclear or deceptively worded, encourage misrepresentation.'

"Additionally, § 32-7-23(a), [Ala. Code 1975,] the section of the Motor Vehicle Safety-Responsibility Act requiring insurers to offer UM coverage, requires that policy provisions relating to UM coverage be approved by the commissioner.

"Section 27-2-7(6) of the Insurance Code grants the commissioner broad investigative authority. That subsection provide[s]:

> "'The commissioner shall ... [c]onduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he or she may deem proper to determine whether any person has violated any provision of this title or to secure information useful in the lawful administration of any such provision....'

"Regarding rates, Chapter 13, Article 3, grants the commissioner even greater authority to inquire into and to examine the records and business practices of casualty insurers. Section 27-13-74, Ala. Code 1975, states:

> "'The commissioner may, whenever he deems it expedient, but at least once in every five years, make, or cause to be made, an examination of the business, affairs and method of operation of each rating organization doing business in this state and a like examination of each insurer making its own rates.... The officers, managers, agents, and employees of such rating organization or insurer making its own rates shall exhibit all its books, records, documents, or agreements governing its method of operation, its rating systems and its accounts for the purpose of such examination. The commissioner, or his representative, may, for the purpose of facilitating and furthering such examination, examine, under oath, the officers, managers, agents, and employees of such rating organization or insurer making its own rates.'

"The legislature, therefore, has granted the commissioner the authority not only to inquire into the rates applied and premiums charged by casualty insurers, but also to inquire into a casualty insurer's 'business, affairs and method of operation.' Id.

"The Insurance Code also grants the commissioner the authority to hold hearings and provides for judicial review of the commissioner's decisions. Generally, the Insurance Code requires the commissioner to hold hearings upon written demand of any person aggrieved by an act, a threatened act, or a failure of the commissioner. See § 27-2-28(b), Ala. Code 1975. Once the commissioner has issued a decision, or if the commissioner refuses to hold a hearing, the aggrieved party may appeal to the Montgomery Circuit Court. See § 27-2-32, Ala. Code 1975.

"Specifically regarding rates, the Department may require insurers to furnish 'all pertinent information' regarding a rate to persons affected by the rate. See § 27-13-70, Ala. Code 1975. Section 27-13-71, Ala. Code 1975, requires insurers to provide a means by which persons affected by a rate 'may be heard on a written application to reduce such rate.' That section then states:

> "'If such rating organization or such insurer shall refuse to reduce such rate, the person, or persons, affected thereby may make a like application to the commissioner within 30 days after receipt of notice in writing that the application for reduction of rate has been denied by such rating organization or by such insurer.... The commissioner shall fix a time and place for hearing on such application, upon not less than 10 days' notice by registered or certified mail, for the applicant and such rating organization

> or such insurer to be heard. The commissioner shall make such order as he shall deem just and lawful upon the evidence placed before him at such hearing.'

"Section 27-13-81, Ala. Code 1975, then provides a means by which the commissioner's decisions may be reviewed by the Montgomery Circuit Court and then by the Court of Civil Appeals.

"II. The Filed-Rate Doctrine

"The filed-rate doctrine limits judicial review of rates that have been approved by regulatory agencies. Describing the doctrine in a case involving an insurance rate approved by the commissioner, this Court has stated: 'The filed-rate doctrine provides that once a filed rate is approved by the appropriate governing regulatory agency, it is per se reasonable and is unassailable in judicial proceedings.' Birmingham Hockey Club, Inc. v. National Council on Compensation Ins., Inc., 827 So. 2d 73, 78 n. 4 (Ala. 2002) (emphasis added). The bar of the filed-rate doctrine goes to the court's jurisdiction over the subject matter. See Birmingham Hockey Club, 827 So. 2d at 83 n. 11 ('Because the filed-rate doctrine prohibits collateral challenges to rates properly approved by the insurance commissioner, any such challenge raised in the courts is due to be dismissed.' (citing Allen v. State Farm Fire & Cas. Co., 59 F.Supp.2d 1217, 1227-29 (S.D. Ala. 1999))). Accordingly, when an insured challenges the rates of an insurer that have been approved by the commissioner, the filed-rate doctrine precludes judicial review.

"We note that, with regard to the statutory procedure for seeking a reduction in rates, § 27-13-71 provides a remedy for reduction from the filed rate if circumstances warrant. Therefore, proceedings under § 27-13-71 are distinguishable

from an impermissible attack on the rate as filed, and such proceedings are not subject to the bar of the filed-rate doctrine. The extent to which § 27-13-71 requires exhaustion of an administrative remedy is a separate question we address below.

"III. Exhaustion of Administrative Remedies

"When the insured asserts the entitlement to a reduction from the filed rate, the Insurance Code provides an administrative remedy, followed by judicial review commenced by a petition for the writ of certiorari filed in the Montgomery Circuit Court. See §§ 27-13-71 and 27-13-81. Based on the extensive statutory scheme established by the legislature to regulate insurance, including the administrative remedies provided in §§ 27-13-71 and 27-13-81, the commissioner maintains that 'insurance form and rate approval are only cognizable in the first instance by the Commissioner and the Department of Insurance, not the courts.' Commissioner's brief, at 16. According to the commissioner, therefore, the Insurance Code vests exclusive jurisdiction over claims relating to insurance rates and forms in the commissioner and the Department. Cincinnati agrees.

"In enacting the Insurance Code, the legislature granted the commissioner wide-ranging authority to regulate insurers. More specifically, the legislature has delegated to the commissioner and the Department its authority to regulate insurance rates. City of Birmingham v. Southern Bell Tel. & Tel. Co., 234 Ala. 526, 530, 176 So. 301, 303 (1937) ('That rate making is a legislative and not a judicial function is well established.' (emphasis added)). The authority to regulate rates is comprehensive. Insurers are prohibited from imposing rates other than those approved by the commissioner. See §§ 27-13-67 and 27-13-76. The commissioner also has the authority to regulate insurance forms, including UM-policy provisions. See §§ 27-14-8, 27-14-9, and 32-7-23(a). The commissioner has the

authority to investigate violations of the Insurance Code, including violations relating to insurance forms and rates. See § 27-2-7(6). Furthermore, Chapter 13, Article 3, of the Insurance Code grants the commissioner broad authority to examine the casualty insurers' business, affairs, and methods of operation. See § 27-13-74.

"Peacock, citing Tindle v. State Farm General Insurance Co., 826 So. 2d 144 (Ala. Civ. App. 2001) ..., contends that because § 27-13-71 provides that an insured 'may' be heard by the insurer and 'may' apply to the commissioner for a rate reduction, insureds are not required to seek administrative review before filing suit. In Tindle, the Court of Civil Appeals considered whether the trial court properly dismissed a putative class action against an insurer challenging the insurer's calculation of premiums with respect to home insurance. The Court of Civil Appeals agreed that the insured was required to exhaust administrative remedies before seeking redress through the courts. ...

"Section 27-13-71 states that if, upon application by an insured, an insurer refuses to reduce the insured's rate, the insured 'may make a like application to the commissioner within 30 days.' (Emphasis added.) Peacock contends the legislature's use of the word 'may,' rather than the word 'shall,' indicates that the insured has the option of pursuing administrative remedies or pursuing remedies in court. If, however, the legislature had used the word 'shall,' § 27-13-71 would impose on an insured a statutory duty to pursue administrative remedies upon every rejection of an application for a rate reduction, even where the insured is satisfied with the insurer's explanation of the denial or where the insured lacks the means or is disinclined to pursue further action. Such a construction would lead to an unreasonable result. We consider the more reasonable interpretation of 'may' as used here to be an

expression of the legislature's intent that an insured lodging a complaint was not required to pursue the complaint further if it did not so desire and not the sanction of alternative remedies independent of the Insurance Code. Accordingly, the legislature's use of the word 'may' need not be read so broadly as Peacock contends and, in the context of the entire Insurance Code and the legislative authority over rate-making, discussed below, should not be so read.

"Viewing the Insurance Code as a whole, see Bright[v. Calhoun, 988 So. 2d 492, 497-98 (Ala. 2008)], as allowing a court, outside the appellate review provided for in the Insurance Code, to determine, in proceedings as to which the commissioner is not a party, that a rate approved by the commissioner is unreasonably high would allow that court to require insurers to apply rates independently of the commissioner's involvement. Such a construction of § 27-13-71 would enable courts to interfere with the regulatory power granted the commissioner by the legislature under § 27-13-68. Furthermore, it would enable courts to require insurers in proceedings between an insurer and an insured to apply unapproved rates and, therefore, to engage in conduct prohibited by other sections of the Insurance Code. See §§ 27-13-67 and 27-13-76. However, as this Court has stated in another context, 'the matter of rate making is legislative, and the courts have no right to sit as a board of review to substitute their judgment for that of the Legislature, or its agents in matters within the province of either.' City of Birmingham, 234 Ala. at 531, 176 So. at 305.

"The legislature has created a narrow exception to the principle that rate-making is a legislative prerogative by the procedures established in §§ 27-13-71 and 27-13-81. Under § 27-13-71, an insured dissatisfied with a rate may apply to the insurer for a rate reduction and then to the commissioner if

> the insured does not receive a reduction from the insurer. Under § 27-13-81, the insured may, thereafter, obtain judicial review of the commissioner's decision first by means of a writ of certiorari to the Montgomery Circuit Court and then by means of an appeal to the Court of Civil Appeals. Through these procedures, the legislature has created a limited means by which courts may review the commissioner's rate-making decisions. Sections 27-13-71 and 27-13-81 authorize judicial review only in this context. Peacock's construction of 'may' as that word is used in § 27-13-71 would sanction an unbridled expansion of this exception inconsistent with the general rule that the judicial branch lacks authority to set rates. We decline to ascribe such intent to the legislature based solely on the use of the word 'may' in the context here presented. Consistent with the authority granted the commissioner by the legislature and the limited judicial review of the commissioner's decisions, we conclude that the insured must exhaust his or her administrative remedies before the commissioner before turning to the courts for relief."

Ex parte Cincinnati Ins. Co., 51 So. 3d at 303-08 (some emphasis added; footnotes omitted).

After explaining the authority of the commissioner and the Department, this Court first concluded that Peacock's allegations fell within the jurisdiction of the commissioner because, the Court said, Peacock's allegations challenged Cincinnati's rates and/or rating systems. Ex parte Cincinnati Ins. Co., 51 So. 3d at 308. Specifically, this Court noted that Peacock's complaint contained, among others, the

following allegations: "'This action challenges [Cincinnati's] systematic and ongoing practice of improperly imposing and collecting premiums for certain [UM] insurance coverage when issuing multi-vehicle auto insurance policies in the State of Alabama'"; Cincinnati "'overcharg[es] for UM coverage' and 'charg[es] more than is necessary to provide maximum UM coverage under the contract'"; "Cincinnati receives 'improper gains ... at the expense of insureds and premium payors'"; Cincinnati "'has engaged in a widespread and systematic practice of imposing and collecting premiums for certain unnecessary, improper, and illusory UM coverage when issuing multi-vehicle policies in Alabama'"; Cincinnati "'has breached contracts with [Peacock] and class members by requiring and collecting for additional UM coverage for which there was no consideration flowing from [Cincinnati], as the required additional coverage was illusory and of no additional benefit'"; and Cincinnati's "'practice of requiring (and collecting for) additional UM coverage as described herein is improper.'" Id. at 308-09. The allegations in Peacock's complaint, this Court determined, were "a matter squarely

within the exclusive jurisdiction of the commissioner." Id. at 309 (citing §§ 27-13-65 and 27-13-68 (emphasis added)).

The allegations in the complaint filed by Vernon, as the original class representative, are nearly identical to the allegations in Cincinnati's complaint, as set forth above. In its complaint, Vernon alleged, among other things, that AMIC "collect[ed] premiums for UM/UIM coverage and fail[ed] to provide the coverage for which the class members had paid"; that "policyholders paid for UM/UIM coverage and AMIC failed to provide it"; that the "[p]laintiffs ... have not received and are not receiving valid UM/UIM coverage while, at all times relevant hereto, they have paid premiums for such coverage"; that "AMIC's practice of collecting UM/UIM premiums and not providing valid contracted UM/UIM coverage constitutes a breach of its contracts to Plaintiffs"; and that "[p]laintiffs failed to obtain the benefit of their bargains, and AMIC consequently was unjustly enriched." Thus, under Ex parte Cincinnati Insurance Co., the allegations in the complaint originally filed by Vernon presented issues squarely within the exclusive jurisdiction of the commissioner.

Next, this Court concluded in Ex parte Cincinnati Insurance Co. that the filed-rate doctrine precluded judicial review of Peacock's claims because the essence of his claims was that the commissioner improperly approved Cincinnati's forms and rating plans regarding UM coverage on more than three vehicles listed as covered vehicles in a Cincinnati policy. 51 So. 3d at 305-06 ("'The filed-rate doctrine provides that once a filed rate is approved by the appropriate governing regulatory agency, it is per se reasonable and is unassailable in judicial proceedings.'" (quoting Birmingham Hockey Club, 827 So. 2d at 78 n. 4)).[3] This Court also rejected Peacock's claim that he was not required to exhaust his administrative remedies because, Peacock claimed,

[3]This Court also rejected an alternative argument advanced by Peacock regarding application of the filed-rate doctrine because, this Court stated, "the transcript on which Peacock now relies was not before the trial court when it ruled on Cincinnati's motion to dismiss. '[E]vidence not presented to the trial court will not be considered in [an appellate] proceeding.' Ex parte Volvo Trucks North America, Inc., 954 So. 2d 583, 587 (Ala. 2006)." Ex parte Cincinnati Ins. Co., 51 So. 3d at 309. Furthermore, this Court found that Peacock's alternative argument, the basis of which does not bear repeating because it was based on evidence not properly before this Court, was "misdirected." Id.

administrative review would be futile.[4] Ex parte Cincinnati Ins. Co., 51 So. 3d at 310. Accordingly, this Court held that, "under either of Peacock's alternative contentions the Tallapoosa Circuit Court exceeded its discretion when it denied Cincinnati's motion to dismiss," id., and, therefore, Peacock's action was due to be dismissed under the filed-rate doctrine and because Peacock had failed to exhaust his administrative remedies, id. at 310.

In the present case, the allegations set forth in the complaint are all directly tied to the provision of AMIC's insurance policy that excluded coverage to any person covered by the policy who has collected benefits under the Alabama Workers' Compensation Act. Specifically, by alleging that AMIC charged for UM/UIM coverage but then deviated from the agreed-to coverage by amending the insurance policy to exclude from coverage virtually every person who could properly collect benefits under the policy, Vernon, the original class representative, claimed that AMIC's rates under the policy

[4]One of the four exceptions to the general rule of exhaustion of administrative remedies is that "'"the exhaustion of administrative remedies would be futile ...."'" Ex parte Cincinnati Ins. Co., 51 So. 3d at 310 (quoting Budget Inn of Daphne, Inc. v. City of Daphne, 789 So. 2d 154, 157 (Ala. 2000)).

were excessive, i.e., that premiums were collected but that only illusory (effectively nonexistent) coverage was provided -- that matter is "squarely within the exclusive jurisdiction of the commissioner." Ex parte Cincinnati Ins. Co., 51 So. 3d at 309. Because the class plaintiffs take issue with AMIC's forms and rating plans, both of which involved the commissioner's approval, the filed-rate doctrine precludes judicial review. 51 So. 3d at 309 (citing Birmingham Hockey Club, 827 So. 2d at 78 n. 4).

It is undisputed that Fairfield, as the new class representative, has not exhausted its administrative remedies. Fairfield argues, as an exception to the general rule of exhaustion of administrative remedies, that exhausting its remedies before the commissioner and the Department is unnecessary because, Fairfield says, "the action raises only questions of law and not matters requiring administrative discretion or an administrative finding of fact." (Quoting Ex parte Cincinnati Ins. Co., 51 So. 3d at 310, quoting in turn Budget Inn of Daphne, Inc. v. City of Daphne, 789 So. 2d 154, 157 (Ala. 2000).). Fairfield also argues, as an exception to the general rule of exhaustion of administrative remedies,

that its "available remedy is inadequate" (quoting id.), because, Fairfield says, the trial court, rather than the commissioner and the Department, have the authority to provide the requested relief.

Fairfield is incorrect in stating that this action presents only questions of law and that there are no matters requiring an administrative finding of fact. As just one example, which is taken from the briefs filed with this Court, Fairfield asserts that Steve Wells, president of AMIC, knew that the exclusionary provision of the UM/UIM coverage was "contrary to Alabama law" but that, nonetheless, "AMIC failed to remove the offending exclusion from its UM/UIM policy until after this action was filed." Fairfield's brief, at 30. Stated differently, Fairfield asserts that AMIC willingly placed the exclusionary provision in the insurance policy and removed it only after its insureds filed suit to recover the premiums they had paid for the illusory coverage. On the other hand, AMIC asserts that the exclusionary policy, which it allegedly knew was "contrary to Alabama law," was added not because of its desire to add it but, instead, "was added at the insistence of members of the proposed class!" AMIC's

original appellant's brief, at 27 (emphatic punctuation in original). There is little doubt that the commissioner and the Department would find highly factually relevant whether the class plaintiffs, who now complain of the exclusionary provision of the insurance policy and the financial loss they claim to have suffered from that provision, actually insisted on including the provision in the policy. Furthermore, Fairfield's argument that it is excepted from exhausting its administrative remedies because of the alleged lack of an adequate remedy is meritless. As noted above, Fairfield may seek redress of an adverse judgment from the commissioner by filing a petition for a writ of certiorari in the Montgomery Circuit Court, and then, if redress is not granted, it may seek relief from the Alabama Court of Civil Appeals. See Ex parte Cincinnati Ins. Co., 51 So. 3d at 305 (citing § 27-13-81, Ala. Code 1975).

In sum, this case is quite similar to Ex parte Cincinnati Ins. Co., supra, and requires the same disposition. The filed-rate doctrine requires dismissal of this action, as does first Vernon's and now the class plaintiffs' failure to exhaust its administrative remedies. Cf. Ex parte Cincinnati

Ins. Co., 51 So. 3d at 311 ("[T]he filed-rate doctrine requires dismissal, as does Peacock's failure to exhaust administrative remedies with the commissioner and the Department before seeking redress from the courts."). Accordingly, we vacate the trial court's class-certification order and dismiss the appeal.

ORDER VACATED; APPEAL DISMISSED.

Stuart, Bolin, Parker, Murdock, Shaw, Wise, and Bryan, JJ., concur.

Moore, C.J., dissents.

MOORE, Chief Justice (dissenting).

I respectfully dissent because I believe the circuit court has subject-matter jurisdiction to hear a claim that an exclusion in an insurance policy violates State law and this Court's jurisprudence. Although the complaint initially filed by the City of Vernon ("Vernon"), the original class representative, coincides peripherally with portions of the complaint quoted in Ex parte Cincinnati Insurance Co., 51 So. 3d 298 (Ala. 2010), overall the complaints differ. Unlike the complaint in Cincinnati, which alleged that the insurer was charging "excessive" rates, 51 So. 3d at 309, Vernon's complaint alleges that AMIC fails to provide coverage for which insureds pay. Allegations that the insurer "overcharges" and "charges more than is necessary" for coverage appeared in the complaint in Cincinnati, 51 So. 3d at 309, but not in Vernon's complaint.

Vernon's complaint also differs in that it expressly alleges that AMIC's practice conflicts with the Alabama Uninsured Motorist Act, § 32-7-23, Ala. Code 1975 ("the Act"), and cites two decisions of this Court in support of the proposition that the disputed exclusion is legally void. The

complaint asserts as a question common to the class "whether, in the absence of a valid written waiver, the common insurance policy issued by AMIC violates the provisions of the Alabama Uninsured Motorist Statute."

Because Vernon's complaint challenges the lawfulness of AMIC's exclusion, and not merely the excessiveness of its rates, we should look not to Cincinnati, but to a case on-point: Peachtree Casualty Insurance Co. v. Sharpton, 768 So. 2d 368 (Ala. 2000). In Peachtree, we determined that a claim challenging an exclusion affecting uninsured motorists is not necessarily barred by the filed-rate doctrine when it contravenes the Act, even if the Department of Insurance approved the exclusion. 768 So. 2d at 369. We reasoned that the case was not a rate case and therefore that the filed-rate doctrine was inapplicable. Moreover, "the Department's approval of the policy language does not by itself suggest that [the insurer] may issue a policy that violates the restrictions in § 32-7-23." 768 So. 2d at 373. I believe that here, as in Peachtree, the filed-rate doctrine does not apply.

The doctrine of exhaustion of administrative remedies also does not bar Vernon's, now the City of Fairfield's,

claims because the remedies in §§ 27-2-28 and 27-13-71, Ala. Code 1975, are permissive and not mandatory. See Tindle v. State Farm Gen. Ins. Co., 826 So. 2d 144, 149 (Ala. Civ. App. 2001) (Murdock, J., dissenting) (arguing that the exhaustion-of-remedies doctrine did not apply because the controlling statute, with language virtually identical to § 27-13-71, does not provide an exclusive remedy). Courts remain open to hear a claim that an insurer's exclusion is void under the Act. See McCollum v. Birmingham Post Co., 65 So. 2d 689, 695 (Ala. 1953) (holding that one of the purposes of Ala. Const. 1901, § 13, providing for open courts, is to place "every citizen ... within the protection of the law of the land").[5]

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[5]Even though the parties do not ask this Court to abrogate its application of the exhaustion-of-remedies doctrine in Cincinnati, I note that

> "'[a]ppellate review does not consist of supine submission to erroneous legal concepts even though none of the parties declaimed the applicable law below. Our duty is to enunciate the law on the record facts. Neither the parties nor the trial judge, by agreement or passivity, can force us to abdicate our appellate responsibility."'"

Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 960 (Ala. 2004) (quoting Forshey v. Principi, 284 F.3d 1335, 1357 n.20 (Fed. Cir. 2002), quoting in turn Empire Life Ins. Co. of America v. Valdak Corp., 468 F.2d 330, 334 (5th Cir. 1972)). See also Ex parte Baker, 143 So. 3d 754, 755 n.2 (Ala. 2013) (Moore, C.J., dissenting) (citing cases in which

Alternatively, I believe an exception to the doctrine of exhaustion of remedies applies here because "the available remedy is inadequate," Cincinnati, 51 So. 3d at 310.[6] The City of Fairfield, the new class representative, seeks damages in the amount of UM/UIM premiums paid during the class period, plus interest. Section 27-2-28 enables parties aggrieved by an act or omission of the commissioner of the Department of Insurance to be heard before the commissioner but does not expressly provide for an adversarial hearing in which the insurer is made a party. Furthermore, § 27-13-71, which permits a party affected by an insurance rate to apply for a rate reduction, does not permit that party to seek reimbursement by an insurance company of the party's premiums. Because neither administrative remedy authorizes the commissioner to grant the relief Fairfield seeks, the available remedies are inadequate, and the exhaustion-of-remedies doctrine does not control.

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this Court overruled precedent without an invitation to do so).

[6]Although not argued by the parties, I also believe that the present action may fall within another exception to the exhaustion-of-remedies doctrine where "the question raised is one of interpretation of a statute." Cincinnati, 51 So. 3d at 310.

For these reasons, I respectfully dissent from the decision to dismiss the appeal.