

Oregon Division of Financial Regulation Bulletin No. DFR 2020-1

TO: All Health, Life, and Property and Casualty Insurers

DATE: January 14, 2020

RE: Arbitration Clauses, Choice of Law, and Choice of Venue Provisions in Insurance Policies

Purpose

The purpose of this bulletin is to remind all insurers of the Department of Consumer and Business Services (DCBS) Division of Financial Regulation's (DFR) policy with regards to pre-dispute mandatory arbitration clauses, choice of law provisions, and choice of venue provisions in insurance policies. These provisions unfairly limit or impose unreasonable preconditions on policyholders' ability to adjudicate their disputes in state courts under the protection of Oregon law. These provisions are prohibited in all lines of insurance.

Authority

- ORS 742.005(3)
- ORS 742.005(4)
- ORS 742.018
- ORS 746.240

Definitions

“Choice of Law Provision” means a contractual provision in which the parties specify the state whose law will govern disputes arising under the insurance contract.

“Choice of Venue Provision” means a contractual provision in which the parties establish the location where either party may require the dispute to be tried or arbitrated.

“Pre-Dispute Mandatory Arbitration Clause” means a provision in an insurance policy, rider, endorsement, or any other part of the contract requiring that future disputes involving the insurance policy or claims thereunder must be resolved through arbitration by allowing one party to the dispute to so require when the dispute arises.

Background

The Insurance Code was enacted to regulate the business of insurance and for the protection of the insurance-buying public.¹ Under ORS 742.005, the DCBS director shall disapprove any form if, in the director's judgment, its use would be prejudicial to the interests of the insurer's policyholders or if the director finds it contains provisions which are unjust, unfair, or

¹ See ORS 731.008, ORS 731.012.

inequitable. It is also unlawful to engage in this state in any trade practice that, although not expressly defined and prohibited in the Insurance Code, is found by the director to be an unfair or deceptive act or practice in the transaction of insurance that is injurious to the insurance-buying public.²

Pre-dispute Mandatory Arbitration Clauses

The Oregon Supreme Court has found the use of pre-dispute mandatory arbitration clauses in insurance policies to be unconstitutional.³ Any policy form filing containing pre-dispute mandatory arbitration clauses will be disapproved.

DFR recognizes that the use of arbitration and other alternative dispute resolution methods may be of value in certain instances. For example, arbitration may be faster and less costly than court proceedings. Parties may still avail themselves of these benefits by mutually electing to arbitrate after the dispute arises.

Choice of Venue and Choice of Law Provisions

Longstanding state and federal policy dictate that insurance transacted in this state shall be governed and interpreted under Oregon law. ORS 742.018 prohibits choice of law provisions requiring insurance contracts to be interpreted based on the laws of any other state or country. Choice of law provisions that purport to import foreign law upend consumer expectations, cause confusion among the insurance buying public, and may result in consumer harm.

Similarly, choice of venue provisions that require the insured to travel out of state pose an unfair barrier to adjudicate their claims.⁴ DFR finds choice of venue provisions in an insurance contract to be unfair, injurious to the public, and an unfair trade practice under ORS 746.240.

Guidance to Insurers

Insurance policies may not contain pre-dispute mandatory arbitration clauses, choice of law provisions, or choice of venue provisions. Any policy form filing containing these provisions will be disapproved.

This bulletin is effective upon issuance.



Andrew Stolfi
Administrator/Insurance Commissioner
Division of Financial Regulation

1/14/2020

Date

² See ORS 746.240.

³ See *Molodyh v. Truck Ins. Exchange*, 744 P. 2d 992, 997 (1987) (finding that mandatory, binding alternative dispute resolution provisions in insurance contracts to violate the policyholder's right to a trial by jury under Article I, Section 17 of the Oregon Constitution).

⁴ In instances where the Insurance Code prescribes the method of arbitration, choice of venue provisions are specifically prohibited. See ORS 742.504(10) (requiring arbitration of a dispute of uninsured motorist coverage to take place in the county and state of residence of the insured, in the county and state where the insured's cause of action against the uninsured motorist arose, or at a place mutually agreed upon by the insured and the insurer).