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When the Insurance Industry Covets Our Rights

Joanne Doroshow



Joanne Doroshow, Contributor

Executive Director, Center for Justice & Democracy at New York Law School

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In 1995, a part-time actuary for the Alabama Insurance Department achieved what the insurance industry had been trying to accomplish in state legislatures nationwide for years. With the simple stroke of a pen, Alabama became the first state in the nation to approve “forced arbitration” clauses in insurance policies, abolishing policyholders’ rights go to court against insurance companies or insurance agents for payment of their claims - even if the agent stole the policyholder’s money.

Incredibly, this was done behind the back of then Alabama Insurance Commissioner Mickey DeBellis, who did not find out about the practice for two years. He [told the *Multinational Monitor* magazine](#) in 1998 that when he finally saw the clause, “It was one of the worst I’d ever seen in my life. It took every right away from the policyholder. I blew my top.”

Then,

DeBellis immediately placed a moratorium on approval of mandatory binding arbitration clauses, but was quickly overruled by his boss, Governor [Fob] James.

“I’m sure there was pressure put on him by insurance companies,” says DeBellis.

Governor James instructed DeBellis to start approving these clauses, while issuing arbitration guidelines for insurers.

Instead, after 25 years with the Alabama insurance department, DeBellis resigned.

“Everybody’s entitled to their day in court, and binding arbitration takes that day away from you,” says DeBellis. “I did not feel it was in the best interest of the consumers in this state.”

To say the least. In forced arbitration systems, access to the courthouse door is blocked and all disputes must be resolved privately and secretly by the arbitration company chosen by the insurer. Arbitrators are not required to have any legal training. They may be biased. The discovery process, whereby parties obtain information from one another, is extremely limited. Arbitrators issue no written legal opinions, so no legal precedents or rules for future conduct can be established. And there is no right to appeal even though the arbitrator's decision may be legally incorrect.

The Alabama arbitration rule was [challenged in court](#) and the late actor Christopher Reeve, who had been paralyzed in a horse-riding accident, filed an *amicus* [brief](#). He said,

“One of the hardest things I have had to do since my disability is to deal with insurance companies. I found them to be callous and to try to set up any roadblocks they can to keep from paying legitimate claims. ... I am totally against binding, mandatory arbitration in insurance policies.”

The attorney for those challenging the rule, Jere Beasley, eventually dismissed his lawsuit because, as he told me, the Alabama insurance department stopped approving arbitration clauses. Consumer advocates breathed a sigh of relief. But now, two decades later, [consumer groups are](#) “sounding the alarms” once again. This time, the focus is Texas.

The Texas Department of Insurance (TDI), which has long adhered to a policy of rejecting forced arbitration clauses in insurance policies, is thinking about changing its mind. Specifically, insurer Texas Farm Bureau has asked permission to stick forced arbitration clauses in homeowners policies, which homeowners must maintain as a condition of their mortgage. This [particular proposal](#) would include provisions that violate consumer protections found in [other Texas laws](#) and would impose a gag order on the arbitrator and both parties. *Houston Chronicle* business columnist, Chris Tomlinson, [wrote](#),

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The biggest problem with the Farm Bureau's proposal is secrecy. That means no precedent-setting cases. Every consumer must start from scratch, work independently and possibly achieve wildly varying results. Consumers are also severely limited in what information they can request from the company during arbitration.

According to Alex Winslow, whose consumer group [Texas Watch](#) has been the leading voice against this proposal,

"What the Farm Bureau is asking ... is to take disputes about insurance claims out of court, and push them into private, secret, arbitration proceedings where the industry has rigged the rules of the game.... This is just the latest in a long line of efforts to make it harder for people to get what they're owed under the terms of their policy."

The other real danger, notes Tomlinson, is that "Texas could set a national precedent in the coming weeks that would damage the rights of homeowners across the country." He writes,

The Farm Bureau insists that its proposed clause is for its use only and will be optional. But if Mattax, who was appointed by Gov. Greg Abbott, approves the Farm Bureau's clause, there is no reason why every home insurer in the state wouldn't adopt it....

Once a precedent was set in Texas, the insurance companies would work to implement the clause in other states and in other lines of personal insurance, including auto.

This is why so many national consumer rights organizations have sent [letters](#) and [comments](#) to the TDI asking it to reject the Farm Bureau's request. One letter, signed by 11

national groups, [concluded](#),

We understand that for many years, your agency has maintained a policy of rejecting form and endorsement changes that include pre-dispute binding arbitration. We encourage you to maintain that policy and reject this proposal in order to protect policyholders both in Texas and across our nation.

The right to trial by jury in civil cases is a fundamental right preserved in the 7th Amendment to the U.S. Constitution. Let's hope TDI doesn't give the insurance industry the power to obliterate it.