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California Court of Appeal Rejects Lloyd's Effort to Force Arbitration

The California Court of Appeal has ruled that Lloyd's of London could not force a self-employed plumbing contractor to arbitrate his claim for bad-faith denial of disability insurance benefits. The court said the policy preserved the policyholder's access to the court and that the high costs of arbitration would force abandonment of the claims. *Boghos v. Lloyd's of London et al*., No. H024481, 2003 WL 21241332 (Cal. Ct. App., 6th Dist., 5/29/2003)

In 1998 Antone Boghos took out a long-term disability insurance policy with Petersen International Underwriters, to be underwritten by Lloyd's of London. The policy took effect in January 1999, guaranteeing Boghos a monthly payment benefit if he sustained accidental injuries rendering him unable to perform his job. Lloyd's "certificate of insurance" specified that if the policyholder were denied coverage, he could sue and the insurer agreed to "submit to the jurisdiction of a court of competent jurisdiction within the United States."

In May 2000 Boghos suffered a head injury that resulted in ongoing vertigo and headaches, loss of concentration, diminished physical strength, and has left him unable to perform his work duties. Consequently, he filed a claim with Lloyd's for disability benefits.

In December 2000 Boghos received a letter from Lloyd's notifying him that the company was discontinuing his disability payments. Eleven months later he filed suit in the California Superior Court for Santa Clara County. The complaint stated claims for bad-faith denial of insurance, breach of contract and implied covenant of good faith and fair dealing, and intentional infliction of emotional distress.

Lloyd's moved to compel arbitration in February 2002. Boghos opposed the motion, arguing that Lloyd's and the other defendants had plainly consented to his right to litigate failure-to-pay claims in court.

The trial court found Boghos' favor, and Lloyd's appealed. The California Court of Appeal, 6th District, disagreed with Lloyd's that the service of suit clause constituted consent to the court's jurisdiction only for the purpose of enforcing arbitration awards. Because Boghos' lawsuit was not an action to enforce an arbitration award, the insurer contended, the arbitration provision applied.

The panel said the policy did not require arbitration and that the arbitration clause was illegal because the exceedingly high costs involved would force Boghos to forfeit his claims altogether.

"The court's ruling sends a strong message to insurance companies that they cannot evade responsibility for their misconduct by inserting unconscionable arbitration clauses in their contracts," lead counsel Robert H. Bohn Sr. of Bohn & Bohn in San Jose, Calif., said in a press release. "If Lloyd's had prevailed, then insurance companies could easily strip business owners of the right to have their day in court."

Michael J. Quirk of Trial Lawyers for Public Justice, who argued the appeal, said in a statement that, "Lloyd's of London cannot force an out-of-work policyholder to forfeit his right to sue, and on top of that, pay staggering arbitration costs to challenge the denial of disability coverage. The court was absolutely right to prohibit Lloyd's from saddling the poli-

cyholder with enormous arbitration expenses."

Quirk said the American Arbitration Association's Commercial Arbitration Rules, selected by Lloyd's, would have required Boghos to pay half of AAA's $11,000 case filing and servicing fees, $150 to $250 per day in hearing fees, travel costs to and from Los Angeles, and half of the arbitrator fees of $350 to $500 per hour for up to seven hearing days before a one- or three-arbitrator panel.