APPENDIX

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALLIED PROFESSIONALS INSURANCE COMPANY, A Risk Retention Group, Inc., an Arizona corporation, *Plaintiff-Appellee*, v. MICHAEL SCOTT ANGLESEY; ELISEO GUTIERREZ; VERONICA GUTIERREZ, *Defendants-Appellants*.	No. 18-56513 D.C. No. 8:14-cv-00665-CBM-SH OPINION

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Argued and Submitted January 23, 2020
Pasadena, California

Filed March 12, 2020

Before: Richard R. Clifton and Kenneth K. Lee, Circuit Judges, and Frederic Block,* District Judge.

Opinion by Judge Clifton

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* The Honorable Frederic Block, United States District Judge for the Eastern District of New York, sitting by designation.

COUNSEL

Andrea J. Clare (argued), Telquist Mcmillen Clare, PLLC, Richland, Washington, for Defendants-Appellants.

Michael John Schroeder (argued), Michael J. Schroeder, P.C., Orange, California; Michael B. Kadish, The Kadish Law Group, P.C., Santa Monica, California; for Plaintiff-Appellee.

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OPINION

CLIFTON, Circuit Judge:

The Liability Risk Retention Act of 1986 ("LRRA"), 15 U.S.C. § 3901 *et seq.*, broadly preempts the authority of non-chartering states to regulate the operation of risk retention groups within their borders. A Washington state statute, RCW § 48.18.200(1)(b), has been held to prohibit binding arbitration agreements in insurance contracts in that state. *Dep't. of Transp. v. James River Ins. Co.*, 292 P.3d 118, 123 (Wash. 2013) ("[W]e hold that unless the legislature specifically provides otherwise, RCW 48.18.200 prohibits binding arbitration agreements in insurance contracts."). This case asks us to determine whether the LRRA preempts this provision as it applies to a risk retention group chartered in Arizona but doing business in Washington. We hold that it does.

I. Background

Plaintiff-Appellee Allied Professionals Insurance Company ("APIC") is a risk retention group, a liability insurance company owned by its insured members, chartered in Arizona and doing business in Washington. APIC previously insured Dr. Michael Scott Anglesey, a chiropractor in Washington. In December 2012, Dr. Anglesey provided chiropractic treatment to Mr. Eliseo Gutierrez which allegedly resulted in Mr. Gutierrez suffering a stroke. A few months later, Dr. Anglesey renewed his coverage with APIC but, in doing so, did not inform the company of the potential malpractice claim against him by Mr. and Mrs. Gutierrez. When Dr. Anglesey later notified APIC of this potential claim, the company advised him that it was denying coverage and rescinding his 2012 and 2013 insurance policies.

A year later, Dr. Anglesey informed APIC that he was planning to execute a consent judgment in favor of Mr. and Mrs. Gutierrez and to assign his rights against APIC to them. They had agreed to seek satisfaction on the judgment from APIC and not from Dr. Anglesey. APIC responded by demanding that all claims against APIC be sent to arbitration, pursuant to the arbitration clause in the underlying policies. Dr. Anglesey refused, and APIC filed this lawsuit on April 28, 2014, in the Central District of California against both Dr. Anglesey and Mr. and Mrs. Gutierrez (collectively, "Defendants").[1]

[1] After the commencement of this action in district court, a Washington state court held the settlement agreement between Dr. Anglesey and Mr. and Mrs. Gutierrez to be reasonable and entered the stipulated judgment. Dr. Anglesey and Mr. and Mrs. Gutierrez have filed

The district court initially held that APIC did not have standing to bring the underlying action to compel Defendants to arbitrate. APIC appealed that decision to this court. We ruled that APIC had standing to bring the action against Dr. Anglesey to seek rescission of the policy and declaratory relief and had standing against all Defendants to compel arbitration of those claims. *Allied Prof'ls Ins. Co. v. Anglesey*, 680 Fed. Appx. 586 (9th Cir. 2017). On remand, the district court granted APIC's motion to compel arbitration, granted the motion to stay proceedings pending arbitration, denied a motion by Defendants to transfer venue to the Eastern District of Washington, and certified a controlling interlocutory question of law to this court under 28 U.S.C. § 1292(b). This court granted permission to appeal.

II. Discussion

The question certified by the district court is "whether the Liability Risk Retention Act preempts Wash. Rev. Code § 48.18.200(1)(b) as applied to risk retention groups." "The district court's decision to grant or deny a motion to compel arbitration is reviewed de novo." *Bushley v. Credit Suisse First Boston*, 360 F.3d 1149, 1152 (9th Cir. 2004). We review conclusions of law de novo. *See Mull for Mull v. Motion Picture Indus. Health Plan*, 865 F.3d 1207, 1209 (9th Cir. 2017).

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suit against APIC in the Eastern District of Washington based on APIC's denial of coverage. That suit is stayed pending a decision in this action.

A. Regulatory Structure

Congress enacted the Product Liability Risk Retention Act of 1981 ("PLRRA") as a response to "a seemingly unprecedented crisis in the insurance markets, during which many businesses were unable to obtain product liability coverage at any cost." *Wadsworth v. Allied Prof'ls Ins. Co.*, 748 F.3d 100, 102 (2d Cir. 2014). The Act supports the formation of risk retention groups, organizations "whose primary activity consists of assuming, and spreading all, or any portion, of the liability exposure of its group members." 15 U.S.C. § 3901(a)(4)(A). "Under the PLRRA, [a risk retention group] is permitted to provide product liability insurance in all states, free of insurance regulation by those states, if it complies with the insurance laws of the state it chooses as its 'chartering jurisdiction.'" *Nat'l Warranty Ins. Co. RRG v. Greenfield*, 214 F.3d 1073, 1075 (9th Cir. 2000) (quoting 15 U.S.C. § 3901(a)(4)(C)(i)). The PLRRA only covers risk retention groups in the product liability insurance market. In 1986, Congress enacted the LRRA to expand the benefits of the PLRRA to all commercial liability insurance.

The PLRRA and LRRA create a "tripartite" regulatory scheme for risk retention groups. *See Wadsworth*, 748 F.3d at 103. First, at the federal level, the statutes preempt state laws regulating the operation of risk retention groups. 15 U.S.C. § 3902(a)(1). Second, at the state level, they authorize the chartering state to regulate the groups' formation and operation. *Id.* Finally, also at the state level, they "sharply limit[] the secondary regulatory authority of nondomiciliary states over risk retention groups to specified, if significant, spheres." *Wadsworth*, 748 F.3d at 104; *see also* 15 U.S.C. §§ 3902(a)(1)(A)–(I); 15 U.S.C. § 3905. These regulatory divisions allow for "the efficient operation of risk retention

groups by eliminating the need for compliance with numerous non-chartering state statutes that, in the aggregate, would thwart the interstate operation [of] ... risk retention groups." H.R.Rep. No. 97-190, at 12 (1981), *reprinted in* 1981 U.S.C.C.A.N. 1432, 1441.

B. The LRRA's Preemptive Effect

The answer to the question posed in this case is that the LRRA does preempt Washington's anti-arbitration statute, RCW § 48.18.200(1)(b), as it applies to risk retention groups chartered in other states. In reaching this conclusion, we follow the guide of our own precedent and that of the Second Circuit. *See Attorneys Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.*, 838 F.3d 976 (9th Cir. 2016); *Wadsworth*, 748 F.3d 100.

1. The McCarran-Ferguson Act does not reverse-preempt the LRRA

Defendants first contend that the LRRA does not preempt the Washington anti-arbitration statute because it is "reverse-preempted" by the McCarran-Ferguson Act, 15 U.S.C. § 1011 *et seq*. The McCarran-Ferguson Act is generally understood to protect state regulation of insurance. The Washington Supreme Court relied upon the McCarran-Ferguson Act in holding that RCW § 48.18.200(1)(b) is shielded from preemption by the Federal Arbitration Act. *James River Ins. Co.*, 292 P.3d at 124. Although our court has not opined on the precise issue of the relationship between the McCarran-Ferguson Act and the Federal Arbitration Act, we have repeatedly held that the LRRA is an exception to the McCarran-Ferguson Act's preference for state regulation of insurance. *See Attorneys*

Liab. Prot. Soc'y, Inc., 838 F.3d at 982 n.4 ("We have squarely held that even though the McCarran-Ferguson Act reserves insurance regulation to the states, the LRRA was meant to be an exception for [risk retention groups]."); *Nat'l Warranty Ins. Co.*, 214 F.3d at 1077 ("Even with a general presumption that insurance law should ordinarily be regulated under state law, as reinforced by the McCarran-Ferguson Act, the language and purpose of the LRRA clearly indicate an intent to preempt state laws regulating [risk retention groups]."). Under our precedent, therefore, the McCarran-Ferguson Act does not "reverse-preempt" the LRRA.

2. The LRRA preempts Washington's anti-arbitration statute

Defendants next contend that the LRRA was specifically designed not to preempt all state laws, including ones like the Washington anti-arbitration statute. "When considering whether the LRRA preempts a state law, we first determine whether the challenged aspect of the state law offends the LRRA's broad preemption language. If so, we consider whether one of the LRRA's exceptions, which are contained in §§ 3902(a)(1) and 3905, applies to save the state law. If no exception applies, the law is preempted." *Attorneys Liab. Prot. Soc'y, Inc.*, 838 F.3d at 980 (citations omitted). We conclude that Washington's anti-arbitration statute offends the LRRA's preemption language and that no exception applies to save the law.

The LRRA states in relevant part, "[e]xcept as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would – (1) make unlawful, or

regulate, directly or indirectly, the operation of a risk retention group[.]" 15 U.S.C. § 3902(a). Defendants argue this language ought to be construed narrowly. They contend that the LRRA only requires non-chartering states to refrain from passing laws which prevent risk retention groups from "operating" as an insurance company, and that the anti-arbitration statute in question does not concern their operation. In doing so, Defendants construe the LRRA as an anti-discrimination statute, one which is designed only to keep states from treating risk retention groups differently than other insurance companies.

Defendants' understanding of the statute is mistaken. The LRRA's preemption provision is broadly worded, and this court has repeatedly held that the LRRA has a broad preemptive effect. *See Attorneys Liab. Prot. Soc'y, Inc.*, 838 F.3d at 980–81 ("The LRRA ...broadly preempts 'any [non-chartering] State law . . . .'" (quoting 15 U.S.C. § 3902(a)(1))); *All. of Nonprofits for Ins., Risk Retention Group v. Kipper*, 712 F.3d 1316, 1321 (9th Cir. 2013) ("The LRRA broadly preempts 'any State ... order to the extent that such ... order would ... make unlawful, or regulate, directly or indirectly, the operation of [an RRG].'" (quoting 15 U.S.C. § 3902(a)(1)) (alterations in original)); *Nat'l Warranty Ins. Co. RRG*, 214 F.3d at1077 ("[T]he language and purpose of the LRRA clearly indicate an intent to preempt state laws regulating [risk retention groups]."). This broad effect requires that the term "operation" be read generously. We have previously held that an Alaska statute which prohibited insurance providers from seeking reimbursement of fees incurred defending a non-covered claim regulated the "operation" of a foreign risk retention group. *See Attorneys Liab. Prot. Soc'y, Inc.*, 838 F.3d at 980. The state statute placed "a restriction on Alaska contracts that is 'not

contemplated by the LRRA, and that is not [precluded] by all other states,'" and therefore regulated the risk retention group's operations in conflict with the LRRA. *Id.* at 981 (quoting *Wadsworth*, 748 F.3d at 108) (alteration in original). Similarly, Washington's anti-arbitration statute places a restriction on risk retention groups that is not required by the LRRA or by all other states. Thus, the Washington anti-arbitration statute "regulate[s], directly or indirectly, the operation of a risk retention group." 15 U.S.C. § 3902(a)(1).

Moreover, Defendants' reading of the LRRA would jeopardize the purpose of the statute. The LRRA was not enacted simply to keep states from discriminating against risk retention groups. Instead, as described above, the LRRA was passed by Congress in an effort to support a struggling insurance market. In order to do so, the Act "eliminat[ed] the need for compliance with numerous non-chartering state statutes that, in the aggregate, would thwart the interstate operation [of] . . . risk retention groups." H.R.Rep. No. 97-190, at 12 (1981), *reprinted in* 1981 U.S.C.C.A.N. 1432, 1441 (House report for the PLRRA); *see also* H.R. Rep. No. 99-865, at 8–9 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5303, 5305–06 (House report for the LRRA explaining that it "is necessary to exempt risk retention and purchasing groups from State law . . . in order to achieve the beneficial effects of such groups referred to above."). Allowing a state such as Washington to force foreign risk retention groups to alter their contracts would threaten this goal.

As the anti-arbitration statute "offends the LRRA's broad preemption language," it may only be "save[d]" if an exception in 15 U.S.C. §§ 3902(a)(1) or 3905 applies. *Attorneys Liab. Prot. Soc'y, Inc.*, 838 F.3d at 980. These exceptions generally "authorize[] nonchartering states to

require risk retention groups to comply only with certain basic registration, capitalization, and taxing requirements, as well as various claim settlement and fraudulent practice laws." *Wadsworth*, 748 F.3d at 106. Defendants contend that the Washington anti-arbitration statute falls into two of these exceptions. First, they argue that the anti-arbitration statute is an example of Washington requiring foreign risk retention groups to "comply with the unfair claim settlement practices law of the State." 15 U.S.C. § 3902(a)(1)(A). Second, they claim the Washington statute falls under the exception for state laws "regarding deceptive, false, or fraudulent acts or practices." 15 U.S.C. § 3902(a)(1)(G). Defendants fail to explain how an anti-arbitration statute is an "unfair claim settlement practices law" or how it deals with "deceptive, false, or fraudulent acts," and we do not find support for either contention.

Washington's anti-arbitration statute offends the LRRA's broad preemption language and fails to fall into one of its exceptions. Therefore, the statute is preempted by the LRRA as it applies to out of state risk retention groups.

III. Conclusion

The Washington anti-arbitration statute is preempted by the LRRA as it applies to risk retention groups chartered in another state. We affirm the order of the district court compelling arbitration.[2]

[2] Defendants moved to certify a question to the Washington Supreme Court. Specifically, Defendants proposed to ask that court whether RCW § 48.18.200(1)(b) applied to prohibit the arbitration clause in this risk retention contract. The question of whether that statute, if so interpreted,

AFFIRMED and REMANDED FOR FURTHER PROCEEDINGS.

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has been preempted by the LRRA is a question of federal law, not state law. We deny the motion to certify.

We grant the motion of the National Risk Retention Association for leave to file an *amicus curiae* brief in support of APIC.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- The proceeding involves a question of exceptional importance; or
- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

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  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

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9th Cir. Case Number(s)

Case Name

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALLIED PROFESSIONALS INSURANCE CO.

Plaintiff,

vs.

MICHAEL SCOTT ANGLESEY, ELISEO GUTIERREZ, and VERONICA GUTIERREZ

Defendants.

Case No.: CV 14-00665 CBM

AMENDED ORDER (1) GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS, (2) DENYING DEFENDANTS' MOTION TO TRANSFER, (3) GRANTING PLAINTIFF'S MOTION TO COMPEL ARBITRATION, (4) GRANTING PLAINTIFF'S MOTION TO STAY ACTION, AND (5) DENYING PLAINTIFF'S MOTION FOR ATTORNEY'S FEES

The matters before the Court are (1) Eliseo and Veronica Gutierrez's motion to dismiss for lack for personal jurisdiction (Dkt. No. 33), (2) Defendants' motion to transfer venue to the Eastern District of Washington (Dkt. No. 68), and (3) Plaintiff's motion to compel arbitration, stay the present action, and award attorney's fees (Dkt. No. 71). On February 5, 2018, the Court issued a minute order advising the parties of its decision on these motions, indicating that a written order explaining the basis for the decision would follow. (Dkt. No. 87.) For the reasons below, the Court denies the Gutierrez Defendants' motion to dismiss with

respect to Plaintiff's claim to compel arbitration, grants the Gutierrez Defendants' motion to dismiss with respect to Plaintiff's other claims, denies Defendants' motion to transfer, grants Plaintiff's motion to compel arbitration, grants Plaintiff's motion to stay the action pending arbitration, and denies Plaintiff's motion for an award of attorney's fees.

I. BACKGROUND[1]

In December 2012, Dr. Anglesey provided chiropractic treatment to Mr. Gutierrez. (Compl. ¶ 8.) The day after he received treatment, Mr. Gutierrez had a stroke and was taken to the hospital in an unstable condition. (*Id.* ¶ 10.) Mrs. Gutierrez called Dr. Anglesey and told him that the hospital physicians believed Dr. Anglesey's chiropractic treatment had caused Mr. Gutierrez's stroke. (*Id.*) On January 28, 2013, the State of Washington Department of Health ("Department of Health") sent a letter to Dr. Anglesey informing him of an investigation regarding a complaint of alleged incompetence, negligence, or malpractice. (*Id.* ¶ 11.)

At the time of the incident, Dr. Anglesey had a professional liability insurance policy ("the Policy") with Plaintiff Allied Professionals Insurance Company ("APIC"). In February 2013, Dr. Anglesey renewed his anticipated coverage with APIC by purchasing a new policy for the period of March 2, 2013 to March 2, 2014 ("2013 Policy"). (*Id.*) The 2012 and 2013 Policies both contain arbitration provisions requiring that all disputes or claims be subject to arbitration in Orange County, California. (*Id.* ¶ 7.)

On April 22, 2013, Dr. Anglesey informed APIC of the potential malpractice claim stemming from Mr. Gutierrez's stroke. (*Id.* ¶ 18.) A few days later, APIC sent a letter to Dr. Anglesey informing him that APIC was denying him liability coverage because he failed to report the incident with Mr. Gutierrez

[1] This action has a lengthy procedural history, much of which is irrelevant to the motions under consideration. For the sake of brevity, only those aspects of the background that are pertinent to the present motions are discussed below.

immediately. (*Id.* ¶ 19.) APIC then wrote to Dr. Anglesey informing him that APIC was rescinding both the 2012 and the 2013 Policies. (*Id.* ¶ 22.)

Nearly a year later, on March 25, 2014, counsel for Dr. Anglesey informed APIC that he represented Dr. Anglesey in a professional negligence claim brought by Mr. and Mrs. Gutierrez. (Compl. ¶ 23.) Counsel stated that Dr. Anglesey was planning to execute a consent judgment in favor of Mr. and Mrs. Gutierrez, who would agree to only seek satisfaction of the judgment from APIC. (*Id.*) APIC responded by demanding that Dr. Anglesey arbitrate any claims against APIC. (*Id.* ¶ 24.) Dr. Anglesey refused to arbitrate, and on April 28, 2014, APIC filed this lawsuit against Dr. Anglesey and Mr. and Mrs. Gutierrez. (*Id.*; Compl. at 1.) The complaint seeks (1) an order compelling arbitration of the dispute; (2) rescission of the insurance policies; and (3) declaratory relief. (Compl. at 11-12.)

On March 9, 2015, Dr. Anglesey and Mr. and Mrs. Gutierrez executed a settlement agreement, in which Dr. Anglesey stipulated to entry of judgment against him on the Gutierrez's medical malpractice claim in the amount of $3 million dollars. (Dkt. No. 53, Ex. H.) In exchange, Mr. and Mrs. Gutierrez agreed to execute the judgment only against the APIC insurance policy, not against Dr. Anglesey directly. (*Id.*) To facilitate this, Dr. Anglesey assigned to Mr. and Mrs. Gutierrez all of his rights against APIC under his liability insurance policy. (*Id.*) On April 3, 2015, in accordance with the agreement, Mr. and Mrs. Gutierrez filed their malpractice claim against Dr. Anglesey in Washington state court (Case No. 15-2-00770-7), seeking approval of the settlement and entry of the stipulated judgment. (Dkt. No. 53, Exs. F, H.) On April 10, 2015, the Washington state court held that the settlement agreement amount was reasonable and entered the stipulated judgement. (Dkt. No. 53, Ex. I.)

On April 6, 2015, Mr. and Mrs. Gutierrez and Dr. Anglesey filed suit against APIC in the Eastern District of Washington, based on APIC's denial of coverage. (Dkt. No. 53, Ex. J.) The complaint asserted state law causes of action for the tort

of insurance bad faith, violation of the Washington Consumer Protection Act, and violation of the Insurance Fair Conduct Act. The complaint also sought declaratory judgment on the issue of insurance coverage and APIC's duty to defend Dr. Anglesey. (*Id.*) The Washington suit has been stayed pending a decision in this action. (Dkt. No. 53, Ex. K.)

On May 12, 2017, Plaintiff filed a Motion to Compel Arbitration, Stay Proceedings, and Award Attorneys' Fees and Costs. (Dkt. No. 71.) The same day, Defendants filed a Motion to Transfer Venue, seeking to transfer the action to the Eastern District of Washington. (Dkt. No. 68.) The Gutierrez Defendants have also moved for dismissal on the basis that the Court lacks personal jurisdiction over them. (Dkt. No. 33.)

II. LEGAL STANDARD

A. Motion to Dismiss for Lack of Personal Jurisdiction

Rule 12(b)(2) allows a party to move for dismissal based on lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). Where, as here, there is no applicable federal statute governing personal jurisdiction, the Court follows state law in determining the bounds of its jurisdiction over persons. *See* Fed. R. Civ. P. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located"). Because California's long-arm jurisdictional statute is coextensive with federal due process requirements, Cal. Code Civ. Proc. § 410.10, the jurisdictional analyses under state law and federal due process are the same. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (9th Cir. 2004).

Normally, "[f]or a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum contacts' with the relevant forum such that the exercise of jurisdiction 'does not offend traditional notions of fair play and substantial justice.'" *Schwarzenegger*, 374 F.3d at 801. However,

"the requirement of personal jurisdiction may be intentionally waived, or for various reasons a defendant may be estopped from raising the issue." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704 (1982). For example, "parties to a contract may agree in advance to submit to the jurisdiction of a given court," and "lower federal courts have found such consent implicit in agreements to arbitrate." *Id.* Thus, "[t]he actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not." *Id.* at 704-05.

B. Motion to Transfer Venue

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The purpose of this provision is to "prevent the waste 'of time, energy, and money' and 'to protect litigants, witnesses and the public against unnecessary inconvenience and expense.'" *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (quoting *Continental Grain Co. v. Barge F.B.L.—585*, 364 U.S. 19, 26-27 (1960)). The party moving for transfer has the burden to establish that a transfer will allow a case to proceed more conveniently and better serve the interests of justice. *Rubio v. Monsanto Co.*, 181 F. Supp. 3d 746, 759-60 (C.D. Cal. 2016) (Gee, J.).

Courts "adjudicate motions for transfer [of venue] according to an individualized, case-by-case consideration of convenience and fairness." *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (quoting *Stewart Org. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (internal quotes omitted)). "The calculus changes, however, when the parties' contract contains a valid forum-selection clause...." *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 134 S. Ct. 568, 581 (2013). In such cases, the parties have "waive[d] the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation. A court accordingly must deem the

private-interest factors to weigh entirely in favor of the preselected forum." *Id.* at 582. "[T]he practical result is that forum-selection clauses should control except in unusual cases." *Id.*

C. Motion to Compel of Arbitration

Under the Federal Arbitration Act ("FAA"), a written agreement to arbitrate involving interstate commerce is "valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; *see also Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 118 (2001). A party aggrieved by the refusal of another to arbitrate under a written arbitration agreement may petition a United States district court for an order directing that such arbitration proceed in the manner provided for in the agreement. 9 U.S.C. § 4. The FAA "mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000) (emphasis in original). The Court's role under the FAA is therefore limited to determining: "(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Id.*

III. DISCUSSION

Another judge in this district recently addressed nearly identical motions on a nearly identical set of facts. *See Allied Prof'ls Ins. Co. v. Harmon*, 16-cv-1864, Order (1) Denying Motion to Dismiss, (2) Denying Motion for a Stay, (3) Granting Motion to Compel, and (4) Denying Motion for Reconsideration as Moot (Dkt. No. 54) (C.D. Cal. July 28, 2017) (Staton, J.) ("*Harmon II*"); *see also Allied Prof'ls Ins. Co. v. Miller*, 14-cv-1671, Order Denying Defendant's Motion to Dismiss and Granting Plaintiff's Motion to Compel Arbitration (Dkt. No. 26) (C.D. Cal. Jan. 29, 2015) (Carter, J.) ("*Miller*"). *Harmon II* involved the same plaintiff as in this case, APIC, seeking to enforce an identical arbitration clause against a resident of Washington State based on materially similar facts. The

defendant in that case moved to dismiss for lack of personal jurisdiction, or in the alternative to transfer the action to Washington. APIC moved to compel arbitration. The *Harmon II* court recognized that there is no Ninth Circuit precedent specifically addressing the issues raised by the motions. However, looking to case law in other circuits, the court found that it had personal jurisdiction to enforce the arbitration agreement, that transfer was not warranted, and that the arbitration agreement was enforceable.

Although the decision is not binding on this Court, the Court finds the decision well reasoned and persuasive.

A. Common Issues

Although there are three separate motions presently before the Court, two central questions arise in all three motions. First, does the federal Liability Risk Retention Act (LRRA) preempt Washington's prohibition on mandatory arbitration clauses in insurance contracts? And second, can a non-signatory attempt to collect under an insurance policy while simultaneously avoiding the policy's mandatory arbitration provision? Because these two issues arise in all three motions, the Court addresses them below before turning to the specific motions at issue.

1. Washington's prohibition on mandatory arbitration clauses in insurance contracts is preempted as to APIC by the Liability Risk Retention Act.

Defendants contend that Washington law renders the arbitration agreement in the APIC Policy unenforceable. Wash. Rev. Code § 48.18.200(1)(b); *State Dept. of Transp. v. James River Ins. Co.*, 176 Wash. 2d 390, 400 (2013) (holding that § 48.18.200 "prohibits binding arbitration agreements in insurance contracts"). Because this state law specifically applies to insurance contracts, the McCarran-Ferguson Act generally protects it from preemption by the Federal Arbitration Act. *See* 15 U.S.C. § 1012(b) (protecting state regulations of insurance from federal

preemption, except by federal statutes specifically relating to insurance); *James River*, 176 Wash. 2d at 402 (holding that § 48.18.200 "is shielded from preemption by the FAA under the McCarran-Ferguson Act").

However, because APIC is an Arizona-chartered risk retention group ("RRG") formed under the Liability Risk Retention Act of 1986 (*see* Dkt. No. 71-1 (Schroeder Decl.) ¶ 4), it enjoys additional federal protection against state insurance regulations. *See* 15 U.S.C. § 3902(a) (exempting risk retention groups from regulation by states outside their chartering state, subject to specific enumerated exceptions). "The LRRA leaves regulation of an RRG to the state where the RRG is chartered, and broadly preempts 'any [non-chartering] State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would … make unlawful, or regulate, directly or indirectly, the operation of a risk retention group." *Attorneys Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, P.C.*, 838 F.3d 976, 980-81 (9th Cir. 2016). "[T]he Ninth Circuit has repeatedly endorsed a broad interpretation of the LRRA's preemptive sweep." *Harmon II*, slip op. at 8.

In a recent case, the Ninth Circuit held that the LRRA preempts an Alaska law that attempted to regulate the substantive terms of policies issued by an out-of-state RRG. *See Attorneys Liab. Prot. Soc'y*, 838 F.3d at 980-82. As the *Harmon II* court noted, the rationale employed by the Ninth Circuit in finding the Alaska statute preempted applies with equal force to the Washington provisions at issue here:

> Although *Attorneys Liability Protection Society* did not address mandatory arbitration provisions, there is no meaningful difference between the Alaska Statute at issue there and Washington's prohibition on arbitration clauses and out-of-state forum selection clauses in insurance agreements: Both statutes would preclude a liability risk retention group from enforcing a contractual provision that would be

> allowed under the law of the risk retention group's chartering state—in this case, Arizona. So, under *Attorneys Liability Protection Society*, the LRRA preempts [Wash. Rev. Code] § 48.18.200, and the arbitration clause is enforceable.

Harmon II, slip op. at 9; *accord Speece v. Allied Prof'ls Ins. Co.*, 289 Neb. 75, 91 (2014) (holding that Nebraska's prohibition of arbitration clauses is preempted by the LRRA and thus "does not extend to insurance contracts issued by a foreign risk retention group such as APIC").

Defendants also belatedly attempt to argue that APIC should not be considered a risk retention group under the LRRA because Congress did not intend for organizations structured like APIC to be covered by the Act. (Dkt. No. 82 at 9-13 (arguing that "[n]othing in the LRRA permits operating a Risk Retention Group that has three organizational owners, who are in turn owned by non-insured and non-member investors").) This argument is untimely. APIC has contended from its first filing that it is a risk retention group (*see* Compl. ¶ 1), and it explicitly relied on the LRRA's preemption of Washington law in its Motion to Compel Arbitration (*see* Dkt. No. 71 at 19-22). Defendants even acknowledged in their Opposition to Plaintiff's Motion to Compel Arbitration that APIC is relying on its status as a risk retention group to preempt application of Washington's insurance regulations. (Dkt. No. 78 at 2 ("APIC believes its status as a Risk Retention Group under federal law supersedes the contrary Washington State law addressed in Defendant[s'] moving papers.").) Yet Defendants did not challenge APIC's status as a risk retention group in their Motion to Dismiss (*see generally* Dkt. No. 33), their Motion to Transfer (*see generally* Dkt. No. 70), or their Opposition to Plaintiff's Motion to Compel Arbitration (*see generally* Dkt. No. 78).

It was not until their Reply in Support of Motion to Transfer Venue (Dkt. No. 82) that Defendants first called into question APIC's status as a risk retention

group under the LRRA. The practical result of this delay is to prevent APIC from responding to any of Defendants' arguments regarding its status as a risk retention group. The Court concludes that Defendants waived their challenge to APIC's status as a risk retention group under the LRRA by failing to timely raise it. Further, even if the Court were to overlook Defendants' waiver of this argument, the Court is persuaded by the *Harmon II* court's reasoning in rejecting an identical challenge on the merits, *see Harmon II*, slip op. at 9-10, and Defendants have not presented any arguments to this Court that would compel a different result. Accordingly, the Court is not convinced that Defendant's challenge to APIC's status as a risk retention group is sufficiently meritorious to warrant excusing their failure to timely raise the issue.[2]

For the reasons above, the Court finds that Washington's prohibition on mandatory arbitration clauses, as applied to APIC, is preempted by the LRRA, thus rendering the arbitration clause in the APIC Policy fully enforceable.

2. The Gutierrez Defendants are bound by the insurance policy's arbitration clause.

Given that the APIC Policy's arbitration clause is valid and enforceable, the second question is whether the Gutierrez Defendants are bound by that clause, even though they are not signatories to the agreement.[3] "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002) (quoting *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960)). Thus, "generally only signatories to an arbitration agreement are obligated to submit to binding arbitration...." *Murphy v. DirecTV, Inc.*, 724 F.3d

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[2] Plaintiff objects to documents submitted by Defendants in support of their argument that APIC is not a valid risk retention group. Because the Court has found that argument to be waived and is not considering it, the Court need not reach Plaintiff's objection to the evidence offered in support of that argument.

[3] This issue does not arise with respect to Defendant Anglesey because he is a signatory to the APIC Policy.

1218, 1229 (9th Cir. 2013). However, "nonsignatories of arbitration agreements may be bound by the agreement under ordinary contract and agency principles." *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006) (quoting *Letizia v. Prudential Bache Securities, Inc.*, 802 F.2d 1185, 1187-88 (9th Cir. 1986)). One such principle is equitable estoppel, which "precludes a party from claiming the benefits of a contract while simultaneously attempting to avoid the burdens that contract imposes." *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1045 (9th Cir. 2009) (quotations omitted). Thus, "a nonsignatory may be held to an arbitration clause where the nonsignatory knowingly exploits the agreement containing the arbitration clause despite having never signed the agreement." *Id.* at 1046 (quotations omitted); *JSM Tuscany, LLC v. Super. Ct.*, 193 Cal. App. 4th 1222, 1239-40 (2011); *accord Townsend v. Quadrant Corp.*, 173 Wash. 2d 451, 460-61 (2012).

Although the Gutierrez Defendants are not signatories to the APIC Policy, they have clearly exploited the agreement to claim its benefits. They have filed suit against APIC in Washington as the purported assignees of Dr. Anglesey's rights under the Policy, and they are seeking to collect insurance proceeds under it. "There is no more direct exploitation of a contract than attempting to collect money owed under that agreement." *Harmon II*, slip op. at 8. The Gutierrez Defendants cannot "claim[] the benefit of [the] contract while simultaneously attempting to avoid the burdens that contract imposes." *Mundi*, 555 F.3d at 1045. Accordingly, by attempting to collect under the Policy, Mr. and Mrs. Gutierrez are bound by the arbitration clause contained in that Policy.

B. Motion to Dismiss for Lack of Personal Jurisdiction

1. Personal Jurisdiction for Purposes of Compelling Arbitration

Challenges to personal jurisdiction may be waived by either express or implied consent, *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1406 (9th Cir. 1994), and a forum selection clause is construed as consent by the contracting

parties to the personal jurisdiction of the courts of the selected forum. *Harmon II*, slip op. at 10 (citing *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 458 (9th Cir. 2007); 4 Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1067.3 (4th ed.) (observing that "an agreement with a forum-selection clause" is deemed a waiver of a personal jurisdiction defense in the forum)).

The Ninth Circuit has not squarely addressed whether an arbitration clause that designates a forum for arbitration constitutes submission to the personal jurisdiction of the courts in that forum, but other courts have held that arbitration provisions constitute consent to personal jurisdiction for the limited purpose of enforcing the agreement to arbitrate. *Harmon II*, slip op. at 10; *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 979 (2d Cir. 1996) ("When a party agrees to arbitrate in a state, where the Federal Arbitration Act makes such agreements specifically enforceable, that party must be deemed to have consented to the jurisdiction of the court that could compel the arbitration proceeding in that state. To hold otherwise would be to render the arbitration clause a nullity."); *accord Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704 (1982) ("A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the Court.... [L]ower federal courts have found such consent implicit in agreements to arbitrate."). Because the Federal Arbitration Act only authorizes federal courts to compel arbitration in their own districts, *Cont'l Grain Co. v. Dant & Russell*, 118 F.2d 967, 969 (9th Cir. 1941), the selection of a forum for arbitration would be rendered meaningless if it did not also embody consent to enforce the arbitration agreement in that jurisdiction's courts. *Doctor's Assocs.*, 85 F.3d at 979.

Here, the APIC Policy includes a provision requiring that disputes arising under the policy be arbitrated in Orange County, CA, which is within the Central District of California. (Schroeder Decl. ¶ 13.) "Having chosen to collect under the policy, [Defendants] cannot pick and choose which provisions in it [they] wish[]

to follow." *Harmon*, slip op. at 11; *accord Comer*, 436 F.3d at 1101. Accordingly, by seeking to collect under the APIC Policy, the Gutierrez Defendants have constructively consented to the jurisdiction of this Court for the limited purpose of enforcing the arbitration clause contained in the Policy. The Court therefore denies the Gutierrez Defendants' motion to dismiss insofar as they seek dismissal of Plaintiff's claim under 9 U.S.C. § 4 to compel arbitration.

2. Personal Jurisdiction over Plaintiff's Alternative Causes of Action

While Defendants have constructively consented to the jurisdiction of this Court for purposes of enforcing the arbitration agreement, a separate analysis is warranted as to Plaintiff's claims in the alternative for rescission and declaratory relief, which both seek relief beyond mere enforcement of the arbitration clause. "Personal-jurisdiction requirements … must be satisfied with respect to each claim joined under Rule 18(a)." *Allied Prof'ls Ins. Co. v. Harmon*, 16-cv-1864, Order Granting In Part, Denying in Part, and Holding in Abeyance in Part Defendant's Motion to Dismiss (Dkt. No. 37) (C.D. Cal. March 7, 2017) (Staton, J.) ("*Harmon I*") (quoting 6A Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1588 (3d ed.)).

The APIC Policy does not contain a general forum selection clause for all litigation relating to the Policy; rather, it specifies that *arbitration* shall occur in California. While courts generally construe such clauses as consent to personal jurisdiction "for the limited purpose of compelling arbitration," *Armstrong v. Assocs. Int'l Holdings Corp.*, 242 Fed. App'x 955, 957 (5th Cir. 2007), that is not a basis for construing the arbitration clause as general consent to the Court's jurisdiction for other purposes, such as adjudicating disputes arising under the rest of the contract. *See, e.g.*, *Pfister v. Selling Source, LLC*, 931 F. Supp. 2d 1109, 1116 (D. Nev. 2013) ("[C]ourts have specifically refused to construe an arbitration forum selection clause as consent to personal jurisdiction in any suit other than one arising directly from the agreement to arbitrate itself."); *compare also*

Harmon II, slip op. at 11 (concluding that the court had personal jurisdiction over APIC's claim for an order compelling arbitration) *with Harmon I*, slip op. at 7 ("Because … Allied's request for declaratory relief is not brought to enforce the agreement to arbitrate, this Court lacks jurisdiction over Allied's request for declaratory relief."). Thus, Defendants' constructive consent to this Court's jurisdiction is limited to enforcement of the arbitration agreement. To the extent APIC seeks relief beyond enforcement of the arbitration agreement, it must establish another basis for personal jurisdiction, instead of relying on the constructive consent contained in the arbitration agreement.

APIC attempts to establish an alternative basis for personal jurisdiction by arguing that the Gutierrez Defendants have sufficient contacts with this state to support the Court's personal jurisdiction over them with respect to disputes arising out of the APIC Policy. This argument relies on two propositions. Plaintiff first argues that Defendant Anglesey has sufficient contacts with California—by virtue of his contractual relationship with APIC arising under the Policy—that the Court can exercise personal jurisdiction over Anglesey for purposes of adjudicating disputes relating to the Policy. Plaintiff then argues that, as the assignees of Anglesey's rights under the Policy, the Gutierrez Defendants now essentially stand in Anglesey's shoes and thus Anglesey's contacts with California are imputed to them for purposes of personal jurisdiction. While Anglesey's contacts with California may well be sufficient to support the Court's exercise of personal jurisdiction over him,[4] APIC's argument that Anglesey's contacts with California are imputed to the Gutierrez Defendants for purposes of personal jurisdiction is not persuasive.

The Ninth Circuit has not squarely addressed whether the forum contacts of a contracting party can be imputed to a third-party assignee of the party's

[4] The Court need not resolve this question because Anglesey has not objected to the Court's jurisdiction.

contractual rights. *Harmon I*, slip op. at 5. Further, there is a split within this district on this issue. *Compare Harmon I*, slip op. at 7 (concluding that "the contacts of a contracting party are not imputed to an assignee or third-party beneficiary under a minimum contacts analysis") *with Miller*, slip op. at 10 (concluding that the defendant was "subject to personal jurisdiction in California due to her assumption of Dr. Huang's contract"). It is therefore helpful to look outside this circuit for persuasive authority.

In *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, the Seventh Circuit addressed this precise issue:

> Whether an assignee of a contract necessarily assumes the assignor's contacts with the forum state for purposes of personal jurisdiction is not an issue that has confronted many courts. Notably, however, the courts that have done so ... have determined that an assignee does not step automatically into the shoes of the assignor for purposes of personal jurisdiction.

338 F.3d 773, 784 (7th Cir. 2003).

The Seventh Circuit noted two related principles supporting the conclusion that assignors' forum contacts are not automatically imputed to assignees. *Id.* First, "[e]ach defendant's contacts with the forum State must be assessed individually." *Id.* (internal quotations omitted); *accord Calder v. Jones*, 465 U.S. 783, 790 (1984). And second, "the unilateral activity of parties other than the non-resident defendant cannot satisfy the requirement of the defendant's contacts with the forum state." 338 F.3d at 784; *accord Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014) ("We have consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State."). The court therefore held that its personal jurisdiction inquiry would be limited to assessing the assignee's contacts with the forum state, without regard to the contacts of the assignor. *Id.* at 785.

Plaintiff cites *Bruns v. DeSoto Operating Co.*, 204 Cal. App. 3d 876 (1988), for the proposition that "the jurisdictional, as well as the contractual, elements created by a contract attend to it even when one party's interest is assumed by another entity." 204 Cal. App. 3d at 883. However, the *Bruns* decision is not binding on this Court with respect to the constitutional requirements of personal jurisdiction, *see Cubbage v. Merchent*, 744 F.2d 665, 667 (9th Cir. 1984) ("Federal law is controlling on the issue of due process."), and its persuasive value is undermined by several considerations.

First, insofar as the contract at issue does not contain a general forum selection clause, the submission to a particular forum is not one of the contractual obligations voluntarily assumed by the assignee in accepting the benefits of the contract. Instead, by imputing the assignor's forum contacts to the assignee, the *Bruns* court authorized the plaintiff "to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State," an approach the Supreme Court has "consistently rejected." *Walden*, 134 S. Ct. at 1122.

Second, subsequent decisions by California courts have qualified the holding in *Bruns* and recognized that automatically imputing an assignor's forum contacts to an assignee may violate the assignee's due process rights. In *Indymac Bank*, the California Court of Appeals noted that "with respect to the assumption of obligations, 'due process generally requires that each defendant's contacts with the forum state be assessed individually, [and] a general rule that imputes the assignor's forum contacts to the assignee would, at least in some cases, violate the established norms of due process." *Indymac Bank, F.S.B. v. Royal Bank of Pennsylvania*, No. B174522, 2005 WL 1283304, at *3 (Cal. Ct. App. June 1, 2005) (quoting *Purdue Research Found.*, 338 F.3d at 784).

Accordingly, the Court agrees with the *Harmon* court's reasoning and concludes that "the contacts of a contracting party are not imputed to an assignee

or third-party beneficiary under a minimum contacts analysis." *Harmon I*, slip op. at 7. Because APIC has not established any other sufficient basis for personal jurisdiction with respect to its causes of action for rescission and declaratory judgment, those causes of action against the Gutierrez Defendants are dismissed for lack of personal jurisdiction. Because Defendant Anglesey has not objected to this Court's personal jurisdiction over him, Plaintiff's causes of action against Anglesey for rescission and declaratory judgment remain before this Court.

C. Motion to Transfer Venue

Defendants' primary argument in favor of transfer is that it would allow the Court to avoid reaching the difficult question of personal jurisdiction over the Gutierrez Defendants, since they consent to the transfer and the Eastern District of Washington has personal jurisdiction over all the parties. However, the Court does not transfer actions simply to avoid difficult questions of law, and having reached and decided the Gutierrez Defendants' motion to dismiss, the Court finds this particular basis for transfer unpersuasive.

While Defendants make several other arguments why the Eastern District of Washington would be a more convenient forum, none of these arguments is sufficient to overcome the "[s]ubstantial weight ... accorded to the plaintiff's choice of forum." *Catch Curve, Inc. v. Venali, Inc.*, 05-cv-4820, 2006 WL 4568799, at *1 (C.D. Cal. Feb. 27, 2006) (Preferson, J.). First, Defendants argue that the APIC Policy is most likely governed by Washington law and that the Eastern District of Washington is therefore better equipped to decide difficult state law issues relating to the contract. Second, they argue that Defendants all reside in Washington and the events giving rise to this litigation occurred in Washington, thus giving Washington a greater interest in this action and making it a more convenient location to conduct the litigation.

While Defendants will undoubtedly suffer inconvenience from having to litigate in California rather than Washington, this inconvenience has to be weighed

against the prejudice to Plaintiff that would result from transferring the action to the Eastern District of Washington. Because a district court can only compel arbitration within its own district, *Cont'l Grain Co.*, 118 F.2d at 969, transferring this action to the Eastern District of Washington would prevent Plaintiff from obtaining an order compelling Defendants to arbitrate in California as the arbitration clause dictates. Thus, as the *Harmon II* court recognized:

> [A] 1404 transfer would effectively void the insurance policy's forum selection clause. This would contravene the Supreme Court's instruction that "a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases." *Atl. Marine Const. Co. v. U.S. Dist. Ct. for W. Dist. of Texas*, 134 S. Ct. 568, 581 (2013) (citation omitted). A valid forum selection clause waives any argument based on the parties' private interests, and the public interest factors will rarely justify contravening a forum selection clause on their own. *Id.* at 581-82.

Harmon II, slip op. at 13.

The potential prejudice to Plaintiff from a transfer therefore outweighs the inconvenience to Defendants of litigating in this district, since transfer of the action would effectively prevent Plaintiff from obtaining the relief sought in the complaint and deprive it of the benefit of the Policy's forum-selection clause for arbitration. In light of this, Defendants have failed to meet their burden of showing that a transfer would "allow [the] case to proceed more conveniently and better serve the interests of justice," *Harmon II*, slip op. at 13 (quoting *Amini Innovation Corp. v. JS Imports Inc.*, 497 F. Supp. 2d 1093, 1109 (C.D. Cal. 2007) (Morrow, J.)). Accordingly, the Court denies Defendants' motion to transfer venue to the Eastern District of Washington.

D. Motion to Compel Arbitration

APIC seeks an order compelling Defendants "to submit all of their claims and disputes against APIC to binding arbitration." (Dkt. No. 71 at 2.) In ruling on Plaintiff's motion, the Court's role is limited to determining: "(1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue." *Chiron Corp. v. Ortho Diagnostic Sys., Inc.* 207 F.3d 1126, 1130 (9th Cir. 2000). The Court already concluded above, *see* Section III.A, that the APIC policy contains a valid arbitration agreement that is enforceable against all three Defendants in this action. Thus, the only remaining question is whether the arbitration agreement encompasses the disputes at issue. The arbitration agreement contained in the APIC Policy provides:

> All disputes or claims involving the Company shall be resolved by binding arbitration, whether such dispute or claim arises between the parties to this Policy, or between the Company and any person or entity who is not a party to the Policy but is claiming rights either under the Policy or against the Company. This provision is intended to, and shall, encompass the widest possible scope of disputes or claims, including any issues a) with respect to any of the terms or provisions of this Policy, or b) with respect to the performance of any of the parties to the Policy, or c) with respect to any other issue or matter, whether in contract or tort, or in law or equity.... *Any questions as to arbitrability of any dispute or claim shall be decided by the arbitrator.*

(Schroeder Decl. ¶ 13 (emphasis added).)

Where, as here, a valid delegation provision in an arbitration agreement "clearly and unmistakably" reserves questions of arbitrability for the arbitrator, the court must enforce the agreement and compel arbitration. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-69 (2010); *accord Momot v. Mastro*, 652 F.3d 982, 988 (9th Cir. 2011). Accordingly, the Court grants Plaintiff's motion to

compel arbitration and orders the parties "to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4.

E. Motion to Stay the Action

Because the Court has granted Plaintiff's motion to compel arbitration, the FAA requires that it also grant Plaintiff's motion to stay the instant proceeding. Section 3 of the FAA provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, *shall* on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement....

9 U.S.C. § 3 (emphasis added).

Accordingly, once the Court finds the parties' dispute referable to arbitration, it has no choice but to stay the action in response to a motion requesting the same. This provision applies even when an arbitration provision is enforced against a non-signatory to the agreement. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009) ("[Section 3] says that stays are required if the claims are 'referable to arbitration under an agreement in writing.' If a written arbitration provision is made enforceable against (or for the benefit of) a third party under state contract law, [Section 3's] terms are fulfilled."). Because the issues raised in Plaintiff's remaining claims for rescission and declaratory relief are referable to arbitration, a stay of this action is warranted.

F. Motion for Attorney's Fees

Plaintiff requests that it be granted attorney's fees if its motion to compel arbitration is granted. This request is brought pursuant to California Civil Code § 1717. Although § 1717 does permit a prevailing party to recover reasonable

attorney's fees in a contract action, "fees under section 1717 are awarded to the party who prevailed on the contract overall, not to a party who prevailed only at an interim procedural step." *DisputeSuite.com, LLC v. Scoreinc.com*, 2 Cal. 5th 968, 977 (2017). Because compelling arbitration is merely an interim procedural step, "when a petition to compel arbitration is granted—whether the petition is independently filed or is filed in a pending lawsuit—the trial court cannot award attorney fees at that point." *Roberts v. Packard, Packard & Johnson*, 217 Cal. App. 4th 822, 839 (2013); *accord Frog Creek Partners, LLC v. Vance Brown, Inc.*, 206 Cal. App. 4th 515, 532 (2012). Accordingly, because Plaintiff has prevailed on an interim procedural step but has not yet prevailed on the contract overall, Plaintiff's motion for attorney's fees is denied as premature.

IV. CONCLUSION

Eliseo and Veronica Gutierrez's motion to dismiss is **DENIED** with respect to Plaintiff's claim to compel arbitration; their motion to dismiss is **GRANTED** with respect to Plaintiff's second and third claims for rescission and declaratory relief. Defendants' motion to transfer venue is **DENIED**. Plaintiff's motion to compel arbitration and stay the action is **GRANTED**; the parties shall proceed to arbitration in accordance with the terms of the arbitration agreement. Plaintiff's motion for an award of attorney's fees is **DENIED**.

This order involves a controlling question of law—whether the Liability Risk Retention Act preempts Wash. Rev. Code § 48.18.200(1)(b) as applied to risk retention groups—as to which there is substantial ground for difference of opinion,

and an immediate appeal from this order may materially advance the ultimate termination of the litigation. *See* 28 U.S.C. § 1292(b).

IT IS SO ORDERED.

DATED: August 10, 2018

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELISEO GUTIERREZ and VERONICA GUTIERREZ, husband and wife, and DR. MICHAEL SCOTT ANGLESEY, individually,

Plaintiffs,

v.

ALLIED PROFESSIONALS INSURANCE COMPANY, a Risk Retention Group, Inc., an Arizona Corporation,

Defendant.

No. 4:15-CV-5033-EFS

ORDER DENYING WITH LEAVE TO RENEW PLAINTIFFS' MOTION TO LIFT STAY

Plaintiffs Eliseo and Veronica Gutierrez seek a lift of the stay that was imposed on September 24, 2015. ECF No. 42. The Court imposed the stay because a lawsuit involving the same parties had previously been filed by Defendant Allied Professionals Insurance Co. (APIC) in the Central District of California to determine whether the parties must arbitrate their dispute under the insurance policies' arbitration provision or, alternatively, to seek rescission of the insurance policy. *APIC v. Anglesey*, Case No. 8:14-cv-00665-CBM/SH (C.D. Cal. 2015). The Central District of California—Judge Consuelo Marshall—dismissed that lawsuit for lack of standing because the Gutierrezes had not been assigned Dr. Michael Anglesey's rights under his

professional liability insurance policy with APIC; APIC appealed the dismissal to the Ninth Circuit.

The Ninth Circuit permitted the Central District of California to reconsider its dismissal. *APIC v. Anglesey*, No. 15-55231, Dkt. No. 17 (9th Cir. Sept. 21, 2015). On November 24, 2015, Judge Consuelo Marshall denied reconsideration, determining that facts following the court's earlier dismissal, i.e., that Dr. Anglesey had thereafter assigned his rights under the APIC policy to the Gutierrezes could not be the basis of the court's reconsideration of its prior decision.

On January 20, 2016, the Ninth Circuit set a briefing schedule: opening brief due February 29, 2016; answering brief due March 30, 2016; and the optional reply due fourteen days after service of the answering brief. *APIC v. Anglesey*, No. 15-55231, Dkt. No. 23 (9th Cir. 2015).

In this lawsuit, the Gutierrezes allege that APIC breached its duty of good faith, violated the Washington Consumer Protection Act, and violated the Washington Insurance Fair Conduct Act in its dealings with Dr. Anglesey, and seek a judicial determination regarding insurance coverage and APIC's duty to defend Dr. Anglesey. ECF No. 3. Yet, the insurance policy that APIC issued to Dr. Anglesey had the following arbitration provision:

> **C. Arbitration.** All disputes or claims involving the Company shall be resolved by binding arbitration, whether such dispute or claim arises between the parties to this Policy, or between the Company and any person or entity who is not a party to the Policy but is claiming rights either under the Policy or against the Company. This provision is intended to, and shall, encompass the widest possible scope of disputes or claims, including any issues a) with respect to any of the terms or provisions of this Policy, or b) with respect to the

> performance of any of the parties to the Policy, or c) with respect to any other issue or matter, whether in contract or tort, or in law or equity. Any person or entity asserting such dispute or claim (the "Claimant") must submit the matter to binding arbitration with the American Arbitration Association, under the Commercial Arbitration Rules of the American Arbitration Association then in effect, by a single arbitrator in good standing. If the Claimant refuses to arbitrate, then any other party may, by notice as herein provided, require that the dispute be submitted to arbitration within fifteen (15) days . . . . All procedures, methods, and rights with respect to the right to compel arbitration pursuant to this Article shall be governed by the Federal Arbitration Act. The arbitration shall occur in Orange County, California. The laws of the State of California shall apply to any substantive, evidentiary or discovery issues. Any questions as to arbitrability of any dispute or claim shall be decided by the arbitrator. If any party seeks a court order compelling arbitration under this provision, the prevailing party in such motion, petition or other proceeding to compel arbitration shall recover all reasonable legal fees and costs incurred thereby and in any subsequent appeal, and in any action to collect the fees and costs. A judgment shall be entered upon the arbitration award in the U.S. District Court, Central District of California, or if that court lacks jurisdiction, then in the Superior Court of California, County of Orange.

ECF No. 35, Ex. A at V(C).

Plaintiffs submit that this arbitration provision is void under RCW 48.18.200, which prohibits an insurance contract with a Washington resident from depriving Washington courts of jurisdiction to hear the lawsuit against the insurer. *See State Dep't of Transp. v. James River Ins. Co.*, 176 Wn.2d 390, 399 (2013). APIC responds, in part, that because it is a risk retention group that Congress, as recognized under the Liability Risk Retention Act of 1986, preempted state laws, such as RCW 48.18.200, which seek to regulate the business of a risk retention group. *See* 15 U.S.C. § 3902(a). And APIC interprets Ninth Circuit case law as limiting the authority to compel arbitration to the Central District of California, or Orange County, citing to

Continental Grain v. Dant & Russell, 118 F.2d 967 (9th Cir. 19410; *Textile Unlimited, Inc. v. A..BMH & Co., Inc.*, 240 F.3d 781, 783 (9th Cir. 2001).

At this time, this Court will not wrestle with this issue. If the Ninth Circuit decides to reverse the Central District of California decision, then the Court anticipates that Judge Marshall will wrestle with the issue of whether the parties' claims and/or counterclaims must be submitted to the arbitrator. If the Ninth Circuit affirms Judge Consuelo's dismissal, then the Court anticipates it will address this issue through either a motion to compel arbitration by APIC or a motion to enjoin arbitration by Plaintiffs. In the interim, the Court determines that comity calls for continuation of the stay given the fairly quick briefing schedule the Ninth Circuit has set for the appeal. If a Ninth Circuit decision has not been issued by July 1, 2016, Plaintiffs are encouraged to refile their motion to lift stay. However, a delay of another five months, or a total stay of nine months, should not cause prejudice to any party given the procedural history of the assignment to Plaintiffs of Dr. Anglesey's assignment of rights under the APIC insurance policy.

For the reasons set forth above, **IT IS HEREBY ORDERED:**

1. Plaintiffs' Motion to Lift Stay, **ECF No. 42**, is **DENIED WITH LEAVE TO RENEW.**
2. This lawsuit is **STAYED.** Following the Ninth Circuit's decision, counsel is to file a notice updating the Court as to the action taken by the Ninth Circuit. If the Ninth

Circuit does not issue a decision by July 1, 2016, a party may file a motion to lift the stay.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 1st day of February 2016.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

ELISEO GUTIERREZ and VERONICA GUTIERREZ, husband and wife; and DR. MICHAEL SCOTT ANGLESEY, individually,

Plaintiffs,

vs.

ALLIED PROFESSIONALS INSURANCE COMPANY, a Risk Retention Group, Inc., an Arizona Corporation,

Defendants.

Case No.: 4:15-CV-5033-EFS

COMPLAINT AND PETITION FOR DECLARATORY RELIEF

COME NOW the Plaintiffs, by and through their attorneys, Telquist Ziobro McMillen Clare, PLLC, hereby allege the following:

I. JURISDICTION & VENUE

1.1 This Court has jurisdiction pursuant to 28 U.S.C. §1332(a), as a complete diversity of citizenship exists, and the matter in controversy exceeds the sum or value of $75,000.

1.2 Defendant APIC is an Arizona Corporation that maintains administrative offices in California. APIC has no offices or employees in the State of Washington.

1.3 All plaintiffs are residents and citizens of the State of Washington.

II. PARTIES

2.1 Plaintiffs Eliseo and Veronica Gutierrez are husband and wife constituting a marital community under the laws of the State of Washington. Plaintiffs Eliseo and Veronica Gutierrez are residents of Franklin County, Washington.

2.2 Plaintiff Dr. Michael Anglesey ("Dr. Anglesey") is a licensed chiropractor conducting business in Benton County, Washington. Dr. Anglesey is a resident and citizen of the State of Washington.

2.3 Allied Professional Insurance Co., a Risk Retention Group, Inc., ("APIC") is an Arizona licensed, Federal Risk Retention Group formed under the Federal Product Liability Risk Retention Act of 1981, as amended by the Liability

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Risk Liability Retention Act of 1986, 15 U.S.C. §3901 et seq. APIC is an Arizona Corporation that maintains a mailing address in Orange County, California. APIC engages in business in Washington as a "foreign" Risk Retention Group.

III. STATEMENT OF FACT

3.1 Defendant APIC has supplied Dr. Anglesey with professional liability policies since 2001. Dr. Anglesey purchased Member Policy No. APIC-234618 for the period of March 2, 2012 to March 2, 2013 (the "2012 policy") and Member Policy No. APIC-244016 for the period of March 2, 2013 to March 2, 2014 (the "2013 policy"). Dr. Anglesey relied on APIC as his malpractice carrier to protect him in the event of a malpractice claim.

3.2 Dr. Anglesey provided chiropractic treatment to Eliseo Gutierrez on December 10, 2012; December 11, 2012; and December 13, 2012. During Dr. Anglesey's treatment of Mr. Gutierrez on December 13, 2012, Mr. Gutierrez suffered a bilateral vertebral artery dissection. Mr. Gutierrez was transported by ambulance from Dr. Anglesey's office to Kadlec Medical Regional Center. Shortly thereafter, Eliseo Gutierrez was airlifted to Harborview Medical Center.

3.3 Eliseo Gutierrez has suffered permanent vision loss and extensive neurological damage as a result of the ischemic stroke.

3.4 On or about January 28, 2013 a letter was sent to Dr. Anglesey from the Washington State Department of Health. In said letter, Dr. Anglesey was

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informed that a complaint alleging unprofessional conduct had been received and that investigator Eric Koch had been assigned. The letter did not provide the identity of the complainant.

3.5 Dr. Anglesey submitted a form to renew his professional liability policy with APIC on February 28, 2013. The single page member renewal form doubled as an invoice. Dr. Anglesey completed the form and authorized use of the 'credit card on file' for the annual premium amount of $461. Such premium payment represented liability coverage from March 2, 2013 to March 2, 2014. Dr. Anglesey faxed the renewal form/invoice to APIC which was stamped "received" on February 28, 2013.

3.6 In March 2013, Dr. Michael Anglesey received another letter from the Department of Health regarding: "RE: 2013-269CH". The letter, authored by investigator Eric Koch, requested the "full and complete patient records for "Eliseo Gutierrez".

3.7 On or before April 1, 2013, Dr. Anglesey notified APIC of a potential claim involving Mr. Gutierrez. Dr. Anglesey specifically requested APIC assist him during the Department of Health investigation.

3.8 On April 26, 2013, counsel for APIC prepared two separate certified letters to Dr. Anglesey. One letter is in regards to the State Department of Health investigation and provides a "date of incident" as January 28, 2013. This letter

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states that the policy does not provide coverage of the "claim" Anglesey tendered on April 22, 2013. The letter indicates coverage is denied "for board investigations". The letter states Dr. Anglesey's "failure to report the claim timely" requires denial of any claim. Additionally, the letter cites a breach of warranty as an alternate basis to deny coverage.

3.9 The other letter dated April 26, 2013, authored by APIC's attorney, addresses Dr. Anglesey's renewal form and suggests Dr. Anglesey's failed to disclose Gutierrez's potential claim or the department's investigation thereon. In closing, counsel for APIC extends an opportunity for Dr. Anglesey to provide information with regard to the facts and circumstances no later than May 10, 2013.

3.10 On May 30, 2013 attorney for APIC prepared a letter to Dr. Anglesey advising him that APIC was rescinding the 2012 policy and the 2013 policy. Specifically, the May 30 letter provided: "As a result of this rescission, your contracts rights under both the 2012 policy and the 2013 policy are extinguished as though neither the 2012 policy nor the 2013 policy ever existed."

3.11 On June 20, 2013, letters were sent to Dr. Anglesey and Mr. and Mrs. Gutierrez from the Department of Health. The identical letters provided: "Based upon our investigation the Chiropractic Commission closed the case because of insufficient evidence."

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3.12 On May 19, 2014, Eliseo and Veronica Gutierrez filed a malpractice action against Dr. Anglesey in Benton County Superior Court (Cause No. 14-2-01315-6). Dr. Anglesey retained personal counsel to respond.

3.13 On or about March 25, 2014, attorney for Dr. Anglesey wrote to APIC informing the liability carrier that: a) it had a duty to defend the insured; b) that Dr. Anglesey lacked adequate to funds/resources to defend the Gutierrez lawsuit; c) that Dr. Anglesey intended to consent to judgment and assign any bad faith claims in exchange for a covenant not to execute; and d) APIC had 30 days to reconsider its position regarding coverage and/or its duty to defend.

3.14 In response to the March 25, 2014 letter, APIC affirmed its decision to deny coverage and rejected any obligation to defend Dr. Anglesey against the Gutierrez suit.

3.15 The Gutierrez's offered to settle all claims against Dr. Anglesey for $3 million, which is believed to be the full applicable policy limits of Dr. Anglesey's liability policy with APIC. The Gutierrez's actual damages are far in excess of $3 million.

3.16 On April 29, 2013, APIC filed a civil action against Dr. Anglesey and the Gutierrez' in the Central District of California United States District Court (Case No. 8:14-CV-00665-CBM). APIC sought to compel arbitration and obtain

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declaratory relief regarding rescission of the insurance policy. Dr. Anglesey and the Gutierrez' appeared and moved to dismiss the action.

3.17 In the April 29, 2013 federal complaint (Case No. 8:14-CV-00665-CBM) APIC averred: "On April 22, 2013, Dr. Anglesey for the first time informed APIC of the potential malpractice claim involving Mr. Gutierrez' stroke, which Mr. Gutierrez had suffered in December 2012. Before this time, APIC had no knowledge of this potential claim." Despite APIC's representation to the California federal district court, APIC did have knowledge prior to April 22, 2013 concerning the potential malpractice claim involving Mr. Gutierrez.

3.18 Gutierrez took a voluntarily nonsuit and dismissed the state court action against Dr. Anglesey without prejudice and without costs on July 31, 2014.

3.19 On January 15, 2015, the Honorable Judge Consuelo B. Marshall of the United States District Court for the Central District of California dismissed APIC's Complaint.

IV. ASSIGNMENT

4.1 Dr. Anglesey entered into a settlement agreement with Eliseo and Veronica Gutierrez on or about January 30, 2015.

4.2 The purpose of the settlement agreement between Anglesey and Gutierrez was to forever settle and resolve any and all disputes, claims, and

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controversies that have been asserted, will be asserted, or could have been asserted by Gutierrez against Anglesey.

4.3 Pursuant to the settlement agreement, Dr. Anglesey stipulated to the entry of judgment against him in the amount of $3 million dollars and assigned to Gutierrez any and all rights Anglesey maintained under the 2012 and 2013 professional liability policies issued by APIC.

4.4 Pursuant to the settlement agreement, Gutierrez stipulated to a covenant not to execute judgment against Dr. Anglesey.

4.5 The assignor, Dr. Anglesey, has relinquished all control and rights or power of revocation over the subject matter of the assignment.

4.6 The assignees, Eliseo and Veronica Gutierrez, have stepped into the shoes of the assignor and have all of the rights of the assignor.

4.7 Proper consideration was exchanged to support the assignment.

4.8 The assignment from Dr. Anglesey to Gutierrez constitutes a valid assignment under Washington law.

V. FIRST CLAIM FOR RELIEF: TORT OF INSURANCE BAD FAITH

5.1 Plaintiffs re-allege and incorporate paragraphs 3.1 through 3.19 as if fully set forth herein.

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5.2 APIC is in the business of providing professional liability insurance to chiropractors in Washington.

5.3 All insurers providing insurance in Washington maintain a duty of good faith and fair dealing towards their insureds.

5.4 APIC beached its duty of good faith relative to its insured, Dr. Anglesey.

5.5 As a result of APIC's breach, Dr. Anglesey was harmed.

VI. SECOND CLAIM FOR RELIEF: VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT

6.1 Plaintiffs re-allege and incorporate paragraphs 3.1 through 3.19 as if fully stated herein.

6.2 Defendant APIC is an insurer in the business of insurance.

6.3 Defendant APIC engaged in unfair or deceptive acts or practices in the conduct of such business.

6.4 Defendant APIC's unfair or deceptive acts or practices occurred in trade or commerce.

6.5 Defendant APIC's acts and/or omissions impact public interest.

6.6 Dr. Anglesey has suffered significant harm as a result of APIC's unfair or deceptive acts or practices.

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VII. THIRD CLAIM FOR RELIEF: VIOLATION OF THE INSURANCE FAIR CONDUCT ACT ("IFCA")

7.1 Plaintiffs re-allege and incorporate by reference paragraphs 3.1 through 3.19 as if fully stated herein.

7.2 Defendant APIC is an insurer in the business of insurance.

7.3 In the conduct of its business, APIC engaged in unfair or deceptive acts or practices, as defined under the IFCA.

7.4 Plaintiffs have suffered actual damages as a result of APIC's unfair or deceptive acts and practices.

VIII. DECLARATORY RELIEF AGAINST DEFENDANT

8.1 Plaintiffs re-allege and incorporate by reference paragraphs 3.1 through 3.19 as if fully stated herein.

8.2 Plaintiffs desire a judicial determination on the issue of insurance coverage for Dr. Anglesey.

8.3 Plaintiffs desire a judicial determination of APIC's duty to defend Dr. Anglesey.

8.4 Such declarations are necessary and appropriate at this time in order to ensure the parties have acted according to their respective duties under Washington law.

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IX. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for the following relief:

1. Judicial declaration that Dr. Anglesey maintained insurance coverage and that defendant APIC had a duty to defend Dr. Anglesey;

2. Judicial declaration that Dr. Anglesey is entitled to insurance coverage by estoppel;

3. For non-economic and consequential damages in an amount determined at the time of trial;

4. For treble damages pursuant to RCW 48.30.015;

5. For treble damages up to $10,000 pursuant to RCW 19.86.090;

6. For costs and attorney's fees as allowable under Washington law; and

7. For such other and further relief as the Court may deem just and proper.

DATED this 6th day of April, 2015.

By: /s/ Andrea J. Clare
ANDREA J. CLARE, WSBA #37889
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 6, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System.

DATED this 6th day of April, 2015, at Richland, Washington.

By: /s/ Kristi Flyg
Legal Assistant to Andrea J. Clare
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United States Code Annotated
Title 15. Commerce and Trade
Chapter 65. Liability Risk Retention (Refs & Annos)

15 U.S.C.A. § 3901

§ 3901. Definitions

Currentness

(a) As used in this chapter--

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"--

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of--

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association--

(A) whose primary activity consists of assuming, and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which--

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before October 27, 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which--

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as--

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than--

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".[1]

(5) "purchasing group" means any group which--

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State;

(6) "State" means any State of the United States or the District of Columbia; and

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able--

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

CREDIT(S)

(Pub.L. 97-45, § 2, Sept. 25, 1981, 95 Stat. 949; Pub.L. 98-193, Dec. 1, 1983, 97 Stat. 1344; Pub.L. 99-563, §§ 3, 4, 12(b), Oct. 27, 1986, 100 Stat. 3170, 3171, 3177.)

Notes of Decisions (6)

Footnotes

1

So in original. The period probably should be a semicolon.

15 U.S.C.A. § 3901, 15 USCA § 3901
Current through P.L. 116-151.

End of Document

United States Code Annotated
Title 15. Commerce and Trade
Chapter 65. Liability Risk Retention (Refs & Annos)

15 U.S.C.A. § 3902

§ 3902. Risk retention groups

Currentness

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would--

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to--

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioners in any State in which the group is doing business to determine the group's financial condition, if--

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an

examination of the group; and

(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued--

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise, discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) Scope of exemptions

The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to--

(1) liability insurance coverage provided by a risk retention group for--

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of--

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

(c) Licensing of agents or brokers for risk retention groups

A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Documents for submission to State insurance commissioners

Each risk retention group shall submit--

(1) to the insurance commissioner of the State in which it is chartered--

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State--

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by--

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Power of courts to enjoin conduct

Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin--

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) State powers to enforce State laws

(1) Subject to the provisions of subsection (a)(1)(G) (relating to injunctions) and paragraph (2), nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(h) State authority to regulate or prohibit ownership interests in risk retention groups

Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

CREDIT(S)

(Pub.L. 97-45, § 3, Sept. 25, 1981, 95 Stat. 950; Pub.L. 99-563, §§ 5, 7, 8(a), 12(c), Oct. 27, 1986, 100 Stat. 3172, 3175, 3178.)

Notes of Decisions (19)

15 U.S.C.A. § 3902, 15 USCA § 3902
Current through P.L. 116-151.

End of Document

United States Code Annotated
Title 15. Commerce and Trade
Chapter 65. Liability Risk Retention (Refs & Annos)

15 U.S.C.A. § 3905

§ 3905. Clarification concerning permissible State authority

Currentness

(a) No exemption from State motor vehicle no-fault and motor vehicle financial responsibility laws

Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) Applicability of exemptions

The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) Prohibited insurance policy coverage

The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of demonstrating financial responsibility

Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

CREDIT(S)

(Pub.L. 97-45, § 6, as added Pub.L. 99-563, § 8(c), Oct. 27, 1986, 100 Stat. 3175.)

Notes of Decisions (8)

15 U.S.C.A. § 3905, 15 USCA § 3905
Current through P.L. 116-151.

End of Document

RCW 48.18.200

Limiting actions, jurisdiction. *(Effective January 1, 2020.)*

(1) Except as provided by subsection (3) of this section, no insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state, shall contain any condition, stipulation, or agreement

(a) requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country; or

(b) depriving the courts of this state of the jurisdiction of action against the insurer; or

(c) limiting right of action against the insurer to a period of less than one year from the time when the cause of action accrues in connection with all insurances other than property and marine and transportation insurances. In contracts of property insurance, or of marine and transportation insurance, such limitation shall not be to a period of less than one year from the date of the loss.

(2) Any such condition, stipulation, or agreement in violation of this section shall be void, but such voiding shall not affect the validity of the other provisions of the contract.

(3) For purposes of out-of-network payment disputes between a health carrier and health care provider covered under the provisions of chapter **48.49** RCW, the arbitration provisions of chapter **48.49** RCW apply.

[**2019 c 427 § 29;** 1947 c 79 § .18.20; Rem. Supp. 1947 § 45.18.20.]

NOTES:

Findings—Intent—Effective date—2019 c 427: See RCW **48.49.003** and **48.49.900**.

RCW 48.30.015

Unreasonable denial of a claim for coverage or payment of benefits.

(1) Any first party claimant to a policy of insurance who is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys' fees and litigation costs, as set forth in subsection (3) of this section.

(2) The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits or has violated a rule in subsection (5) of this section, increase the total award of damages to an amount not to exceed three times the actual damages.

(3) The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action.

(4) "First party claimant" means an individual, corporation, association, partnership, or other legal entity asserting a right to payment as a covered person under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by such a policy or contract.

(5) A violation of any of the following is a violation for the purposes of subsections (2) and (3) of this section:

(a) WAC 284-30-330, captioned "specific unfair claims settlement practices defined";

(b) WAC 284-30-350, captioned "misrepresentation of policy provisions";

(c) WAC 284-30-360, captioned "failure to acknowledge pertinent communications";

(d) WAC 284-30-370, captioned "standards for prompt investigation of claims";

(e) WAC 284-30-380, captioned "standards for prompt, fair and equitable settlements applicable to all insurers"; or

(f) An unfair claims settlement practice rule adopted under RCW **48.30.010** by the insurance commissioner intending to implement this section. The rule must be codified in chapter 284-30 of the Washington Administrative Code.

(6) This section does not limit a court's existing ability to make any other determination regarding an action for an unfair or deceptive practice of an insurer or provide for any other remedy that is available at law.

(7) This section does not apply to a health plan offered by a health carrier. "Health plan" has the same meaning as in RCW **48.43.005**. "Health carrier" has the same meaning as in RCW **48.43.005**.

(8)(a) Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner. Notice may be provided by regular mail, registered mail, or certified mail with return receipt requested. Proof of notice by mail may be made in the same manner as prescribed by court rule or statute for proof of service by mail. The insurer and insurance commissioner are deemed to have received notice three business days after the notice is mailed.

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

(d) If a written notice of claim is served under (a) of this subsection within the time prescribed for the filing of an action under this section, the statute of limitations for the action is tolled during the twenty-day period of time in (a) of this subsection.

[2007 c 498 § 3 (Referendum Measure No. 67, approved November 6, 2007).]

WAC 284-30-330 Specific unfair claims settlement practices defined. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

(1) Misrepresenting pertinent facts or insurance policy provisions.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

(4) Refusing to pay claims without conducting a reasonable investigation.

(5) Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss documentation has been submitted.

(6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to promptly pay property damage claims to innocent third parties in clear liability situations. If two or more insurers share liability, they should arrange to make appropriate payment, leaving to themselves the burden of apportioning liability.

(7) Compelling a first party claimant to initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings.

(8) Attempting to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

(9) Making a claim payment to a first party claimant or beneficiary not accompanied by a statement setting forth the coverage under which the payment is made.

(10) Asserting to a first party claimant a policy of appealing arbitration awards in favor of insureds or first party claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring a first party claimant or his or her physician to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.

(12) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(14) Unfairly discriminating against claimants because they are represented by a public adjuster.

(15) Failing to expeditiously honor drafts given in settlement of claims. A failure to honor a draft within three working days after notice of receipt by the payor bank will constitute a violation of this provision. Dishonor of a draft for valid reasons related to the settlement of the claim will not constitute a violation of this provision.

(16) Failing to adopt and implement reasonable standards for the processing and payment of claims after the obligation to pay has been established. Except as to those instances where the time for payment is governed by statute or rule or is set forth in an applicable contract, procedures which are not designed to deliver payment, whether by check, draft, electronic funds transfer, prepaid card, or other method of electronic payment to the payee in payment of a settled claim within fifteen business days after receipt by the insurer or its attorney of properly executed releases or other settlement documents are not acceptable. Where the insurer is obligated to furnish an appropriate release or settlement document to a claimant, it must do so within twenty working days after a settlement has been reached.

(17) Delaying appraisals or adding to their cost under insurance policy appraisal provisions through the use of appraisers from outside of the loss area. The use of appraisers from outside the loss area is appropriate only where the unique nature of the loss or a lack of competent local appraisers make the use of out-of-area appraisers necessary.

(18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.

(19) Negotiating or settling a claim directly with any claimant known to be represented by an attorney without the attorney's knowledge and consent. This does not prohibit routine inquiries to a first party claimant to identify the claimant or to obtain details concerning the claim.

[Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 16-20-050 (Matter No. R 2016-12), § 284-30-330, filed 9/29/16, effective 10/30/16; WSR 09-11-129 (Matter No. R 2007-08), § 284-30-330, filed 5/20/09, effective 8/21/09. Statutory Authority: RCW 48.02.060, 48.44.050 and 48.46.200. WSR 87-09-071 (Order R 87-5), § 284-30-330, filed 4/21/87. Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 78-08-082 (Order R 78-3), § 284-30-330, filed 7/27/78, effective 9/1/78.]

WAC 284-30-310 Scope of this regulation. This regulation applies to all insurers and to all insurance policies and insurance contracts. This regulation is not exclusive, and acts performed, whether or not specified herein, may also be deemed to be violations of specific provisions of the insurance code or other regulations.

[Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 09-11-129 (Matter No. R 2007-08), § 284-30-310, filed 5/20/09, effective 8/21/09; WSR 78-08-082 (Order R 78-3), § 284-30-310, filed 7/27/78, effective 9/1/78.]

WAC 284-30-300 Authority and purpose. RCW 48.30.010 authorizes the commissioner to define methods of competition and acts and practices in the conduct of the business of insurance which are unfair or deceptive. The purpose of this regulation, WAC 284-30-300 through 284-30-400, is to define certain minimum standards which, if violated with such frequency as to indicate a general business practice, will be deemed to constitute unfair claims settlement practices. This regulation may be cited and referred to as the unfair claims settlement practices regulation.

[Statutory Authority: RCW 48.02.060 and 48.30.010. WSR 09-11-129 (Matter No. R 2007-08), § 284-30-300, filed 5/20/09, effective 8/21/09; WSR 78-08-082 (Order R 78-3), § 284-30-300, filed 7/27/78, effective 9/1/78.]