



# Office of Public Insurance Counsel

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May 24, 2016

*Via Hand Delivery*

David Mattax  
Commissioner of Insurance  
Texas Department of Insurance  
333 Guadalupe, MC 113-1C  
Austin, Texas 78701

**Re: Texas Farm Bureau Endorsement No. HO-802/Mandatory Mediation-Arbitration**

Dear Commissioner Mattax:

Pursuant to our authority to advocate positions in the best interests of insurance consumers as enumerated in the Texas Insurance Code, the Office of Public Insurance Counsel (“OPIC”) objects to Texas Farm Bureau’s Endorsement No. HO-802 entitled “Mandatory Mediation-Arbitration Endorsement” and respectfully requests that you not approve it for use in the Texas insurance marketplace. We similarly object to any derivation of this subject endorsement that includes an arbitration provision.

We have reviewed the letter from Texas Watch that exhaustively details the problems with arbitration from the consumer’s perspective. We intend to highlight some of our areas of concern in this letter without becoming needlessly repetitive.

Arbitration can be appropriate and beneficial in resolving disputes between parties who are on an equal footing with respect to power, money and sophistication. When parties are not equals in these respects, arbitration proceedings place the less powerful at an extreme disadvantage. While I am tempted to use the “David versus Goliath” analogy to illustrate my point, sadly it isn’t really appropriate when describing this inequality. David at least had a sling and five smooth stones. Texas insurance consumers would not have the benefit of any analogous tools in an arbitration proceeding against an insurance company.

The reasons for this disadvantage are obvious. The insurance company has set the terms of the arbitration proceeding, selected the entity that will select the arbitrator, and pays the arbitrator. Thus, the insurance company controls all facets of the arbitration and engages the loyalty of the arbitrator by being a repeat, well paying customer. As if these advantages are not enough, the subject endorsement does not allow for an appeal, review, or even disclosure of the final arbitration decision. This will severely reduce the transparency of Texas insurance law decisions and negatively affect the ability of the law to evolve to meet future needs.

We understand that Farm Bureau is planning to offer the binding arbitration endorsement as an optional endorsement in selected counties in exchange for a yet unspecified premium discount. This does not alleviate our concerns or objections. First, we are concerned that consumers may opt for a discount while not being fully aware of the arbitration process nor the constitutional rights they would be forfeiting. Second, the optional endorsement may become in effect mandatory if the insurance company refuses to sell or offer policies without the "optional" endorsement. It would be difficult for the regulator or others to easily determine if this was occurring. Third, there is no way to determine at present if the premium discount offered would be sufficient to compensate for the rights lost by the consumer. Instead, the insurance company asks that the form be approved without making any firm guarantees as to the magnitude of any discount.

Even if all of these concerns could be satisfactorily addressed by Farm Bureau, other issues remain for the marketplace as a whole. It is doubtless other companies (some who do not enjoy Farm Bureau's solid reputation in the marketplace) will file similar endorsements if this is approved. In reality, the most problematic companies with the worst claim handling complaints will be the first in line to file their arbitration endorsements. It will be difficult to deprive any company the right to use a similar endorsement. This is a policy bridge the TDI should not cross in our opinion.

Finally, if at the end of the claims process the company is, at worst, faced with going to an arbitration forum where they hold all of the cards, then how much incentive remains for them to handle claims fairly and quickly in the first place? Frankly, we don't know the answer to that question, but we suspect that consumers would be disappointed with the answer when they are faced with filing a claim. Only thereafter will consumers learn what rights they really forfeited for a premium discount.

OPIC respectfully requests that you keep the lid tightly closed on this Pandora's Box by prohibiting this and all future arbitration endorsements in personal lines insurance policies sold in Texas.

Best regards,

A handwritten signature in black ink, appearing to read "Deeia Beck", with a stylized flourish at the end.

Deeia Beck  
Public Counsel