

**MONTGOMERY KIWANIS CLUB  
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## **ARBITRATION IN INSURANCE CONTRACTS**

### **Introduction**

As we all know and acknowledge, Alabama law has consistently disfavored arbitration clauses. Why? Because mandatory arbitration favors large corporations, and because ordinary citizens by submitting to arbitration unknowingly give up their Constitutional right to a trial by jury. This cherished right is one of the few leveling factors between the powerful and the powerless. It is generally recognized that the insurance industry in this country has been the most powerful force insofar as control of government is concerned. Some now say the tobacco industry has become stronger. That claim is subject to serious debate. In any event, insurance bosses exercise tremendous influence over the affairs of government. The present battle over arbitration is a prime example of how an abuse of their power can be detrimental to citizens.

Being forced into arbitration over an insurance dispute is something that no Alabama consumer should ever have to face. Certainly, no lawyer practicing in our state could have predicted that Alabama citizens would now be in a legal battle over the issue. What has happened to bring insurance arbitration into the Courts? Without any notice or public hearing, and in secret, the Alabama Insurance Department approved mandatory, binding arbitration clauses for several insurance companies doing business in Alabama. The first such approval by the Department came about in 1995. At that time this devastating anti-consumer action received no public attention simply because of the manner in which it was done. Initially this change in Alabama Insurance law occurred without the knowledge of either the Insurance Commissioner or the Deputy Commissioner. Approval for arbitration was granted by a part-time consultant who was working three days per month approving policy forms for the Insurance Department. Finally, after months of posturing within the Department, guidelines were mailed out early this year to the approximately 1,700 insurance companies doing business in Alabama. Again, this was done without notice to a single Alabama policyholder. These guidelines turned the entire arbitration process over to the insurance companies to pretty much do as they please concerning arbitration.

The giant and extremely powerful insurance industry has worked hard to take away from Alabama citizens their basic Constitutional right to a trial by jury. The arbitration clauses that have been approved by the Insurance Department are very broad and include any conceivable claims against an insurance company, its officers and agents. This would include claims for fraud and bad faith by a policyholder or the policyholder's family.

Our law firm filed a lawsuit against the Insurance Department in the Circuit Court for Montgomery County designed to put a stop to what we consider to be unauthorized acts by the Insurance Commissioner. At the outset, the Department justified its approval of arbitration based upon the Federal Arbitration Act passed by Congress in 1925. The Legislative history of

this act reveals that Congress never intended for insurance to be covered. Arbitration and insurance were never considered to be compatible and at no time prior to late 1995 had arbitration clauses been placed in Alabama policies. No decision of the U. S. Supreme Court has ever held that arbitration may be included in insurance policies. The reason is most obvious considering the history of arbitration and the recognized legal principles that have been consistently applied over the years. Had arbitration been an available option for insurance companies, one would surmise that the issue would have been considered at some point by the U. S. Supreme Court.

The distinction between mandatory, binding arbitration, mediation, and simple property damage appraisals must be made. Clearly, arbitration, which is both mandatory and binding (with no review), is a different animal. Mediation, even when mandatory, is good and should be encouraged. We are involved with mediation on a regular basis and it works well. Property appraisals have no application to the arbitration issue. Some of the statements by the Insurance Commissioner indicate that he does not understand the distinction between these three entirely different concepts. Obviously, the differences are great.

### **The Federal Arbitration Act**

The Federal Arbitration Act (FAA) provides, in part, that an arbitration clause contained in "a contract evidencing a transaction involving commerce . . . shall be 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 (1997). The term "commerce," as used in the Federal Arbitration Act, means interstate commerce. *Id.* § 1. The fact that the Act relies solely on interstate commerce becomes most significant when you consider subsequent actions by Congress that relate directly to insurance matters. The chronology of Legislative Acts, national and state, is most important when we attempt to unravel what has happened to Alabama consumers. Remember that the FAA was passed by Congress in 1925 which is significant in the insurance dispute setting.

Under Alabama law, arbitration provisions are not enforceable if the contract involves only intrastate commerce. If a contract involves interstate commerce, however, clearly under the holding of *Allied-Bruce*, the Federal Arbitration Act supersedes state law and the arbitration clause can be enforced. While few people favor arbitration in any form, it appears that until Congress or the U. S. Supreme Court wakes up, we are stuck with arbitration in most non-insurance settings. However, insurance contracts present an entirely different issue for the Courts.

The Legislative history of the FAA indicates that Congress never intended for insurance matters to fall under the Act. This is very clear and cannot be disputed.

### **The Constitutional Protections**

The Alabama Constitution guarantees to every citizen the right to a trial by jury. This is a basic right and one which cannot be involuntarily taken from any Alabama citizen. While all constitutional rights are important and should be protected at all costs, the right to a jury trial is one with which no right thinking person would ever dare tamper.

Article I, §11, Constitution of Alabama (1901) provides “(t)hat the right of trial by jury shall remain inviolate.” It is difficult to fathom a more clear and direct mandate to the Courts. Regardless of how hard the insurance industry tries, they can never rationalize away the protection afforded to Alabama citizens by §11. The framers of the Constitution realized that it is the jury system that protects the “powerless” from the “powerful.”

In addition, Article I, §10 and §13 of the Alabama Constitution have applicability to mandatory, binding arbitration. These provisions, combined with §11, make it very clear that the position of the Insurance Department is untenable.

Since at least one member of the Alabama Supreme Court apparently feels that Article IV, §84, Constitution of Alabama (1901) has some involvement in the arbitration issue, I will address it in passing. Section 84 provides:

“It shall be the duty of the legislature to pass such laws as may be necessary and proper to decide differences by arbitrators to be appointed by the parties who may choose that mode of adjustment.” [Emphasis added.]

Even a cursory reading of §84 reveals that this provision cannot be used as a justification for mandatory, binding arbitration. Any lawyer who makes such a contention will find this argument being summarily dismissed by any fair-minded jurist. In any event, the Alabama Legislature did in fact act and subsequently passed Alabama’s Anti-Arbitration Act. The Supreme Court decisions construing §84 have held that arbitration is against public policy in Alabama.

In addition, and even more important to the issue, the right to trial by jury in civil cases is guaranteed by the U. S. Constitution. The Seventh Amendment provides:

“In suits at common law, where the value and controversy shall exceed \$20, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the Rules of the Common Law.”

The United States Constitution, Amendment VII, further supports our contention that an arbitration agreement, as found here, violates an individual’s Constitutional right to trial by jury. The Alabama Supreme Court recognized the Seventh Amendment and its effect on a situation where the enforcement of an arbitration agreement was being sought in state court:

“We must emphasize that any arbitration agreement is a waiver of a party’s right under Amendment VII of the United States Constitution to a trial by jury and, regardless of the federal court’s policy favoring arbitration, we find nothing in the FAA that would permit such a waiver unless it is made knowingly, willingly, and voluntarily.”

All Star Homes d/b/a Best Value Mobile Homes v. Waters, 711 So. 2d 924 (Ala. 1997).

It is obvious from this unambiguous language that the Seventh Amendment does not necessarily require states to provide their citizens jury trials, but rather, protects states from federal laws that infringe upon state conferred Constitutional rights. Many states, such as Alabama, have provided their citizens with a right to trial by jury through the State Constitution. Alabama has done this through Ala. Const., Art. 1 §§ 10, 11 and 13 (1901 Amended 1943).

No other meaning can be drawn from the language of the Seventh Amendment than the fact it was submitted and ratified in order to guarantee that rights expressly declared by state constitutions would be insulated and protected from any federal law infringing upon a citizen’s right to trial by jury in his state. The Seventh Amendment helps to protect each citizen’s Constitutionally guaranteed right to trial by jury.

### **Federal Statutory Law**

In addition to the “guarantees” in the Constitution, Congress has made its position crystal clear. It has long been recognized that the Federal Government has no lawful right nor authority to interfere with the regulation of insurance. This came about as a direct result of the McCarran-Ferguson Act, an Act of Congress, passed in 1945. According to the legislative history, this Act was passed in order for Congress to nullify a 1944 decision of the U. S. Supreme Court that considered insurance matters to be in interstate commerce. Thus, more than 50 years ago, the Congress mandated that insurance regulation was the sole responsibility of the several states. The McCarran-Ferguson Act provides in part: "No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance. . . ." 15 U.S.C. § 1012(b) (1997). In other words, if the application of the Federal Arbitration Act shall invalidate, impair, or supersede any particular state law which regulates the business of insurance, the McCarran-Ferguson Act prevents the application of the Federal Arbitration Act. This is true regardless of whether the contract touches interstate commerce. See Miller v. National Fidelity Life Ins. Co., 588 F.2d 185 (5th Cir. 1979).

In December of 1997, the Chief Counsel for the Alabama Insurance Department correctly addressed the applicability of the McCarran-Ferguson Act to insurance regulation in Alabama. He stated his opinion at that time in concise and easily understood terms:

“The McCarran-Ferguson Act (Title 15, United States Code, §1011, et seq.) charges the individual states with the regulation of insurance and exempts insurance activity from federal regulation.

The Act states that the regulation of insurance by each individual state is in the best interest of the public.” [Emphasis added.]

For some unknown reason, Mr. Bownes now finds himself in the embarrassing position of having to hang his hat on the FAA.

### **Alabama Statutes**

In Oral Argument in *Mae Clark v. Blue Cross/Blue Shield*, a case that is pending in the Alabama Supreme Court, lawyers for Blue Cross conceded that the regulation of insurance is a State function because of McCarran-Ferguson. There are two Acts of the Alabama Legislature that apply to the arbitration battle. The first is §27-14-22, *Code of Alabama*, which states: "All contracts of insurance, the application for which is taken within the state, shall be deemed to have been made within the state and subject to the laws thereof." This Code Section incorporates by reference and makes applicable all provisions of the *Code of Alabama* (as well as Alabama common law) dealing with contracts. As a result, by reference, Alabama's Anti-Arbitration Act [§ 8-1-41(3)] is made applicable to insurance contracts. Unless a tremendous body of Alabama law relating to statutory construction is ignored, this statute must be applied to the arbitration issue.

Section 8-1-41(3), *Code of Alabama*, specifically states that an agreement to submit a controversy to arbitration in Alabama may not be enforced. The application of the Federal Arbitration Act to insurance contracts entered into within the State of Alabama would directly invalidate and supersede the application of § 8-1-41(3). The McCarran-Ferguson Act prevents such a result. The purpose of McCarran-Ferguson is to prevent the application of the Federal Arbitration Act, as well as other federal statutes, that would invalidate, impair, or supersede any law enacted by any state for the purposes of regulating the business of insurance. See 15 U.S.C. § 1012(b) (1997). Because § 27-14-22 incorporates § 8-1-41(3), and because the latter provision renders arbitration provisions unenforceable, the FAA may not dictate that an arbitration clause in an insurance contract must be enforced. This is very clear and should not be subject to serious debate.

The Insurance Department has taken the illogical position that since the Anti-Arbitration Act does not specifically mention insurance, it does not apply to contracts of insurance. Neither does it mention construction contracts nor automobile purchases, but it has traditionally been applied to construction and automobile contracts.

It is rather strange that the present Insurance Commissioner is now basing his inclusion of arbitration clauses in Alabama insurance policies squarely under federal law and specifically the FAA. Perhaps, Mr. Cater has not discussed the concept of Federalism with "his boss," who has been rather outspoken on this subject over the past three years.

The recent abandonment of the FAA as a basis for insurance arbitration by Blue Cross leaves the present Insurance Commissioner out on a very shaky limb. He must come up with some other theory, which is unlikely, in rather short order.

### **Latest Court Decision**

There have been relatively few cases in other jurisdictions that deal with arbitration in insurance policies. This is because few states have faced the issue. The most recent decision to our knowledge is from the Fifth Circuit Court of Appeals. The case of *Munich American Reinsurance Company v. John P. Crawford, Insurance Commissioner of the State of Oklahoma*, 141 F.3d 585 (5<sup>th</sup> Circuit, Texas, 1998) held that the Federal Arbitration Act was “reverse pre-empted” by Oklahoma law under the McCarran-Ferguson Act. Accordingly, the Court held that the dispute was one for the State of Oklahoma to resolve rather than being one that should be submitted to arbitration. This is a most significant decision by a Federal Appellate Court. The Court never reached the Constitutional questions since it went off on McCarran-Ferguson.

## **The Alabama Insurance Commissioner**

In addition to the principles previously discussed, the Insurance Commissioner has run legally aground in several other areas. The Alabama Insurance Code was passed by the Alabama Legislature and has evolved over the years into the present document. The Insurance Code as first passed by the Legislature was designed to protect Alabama consumers. Recent events in the Insurance Department bring that protection into serious jeopardy.

The Insurance Code is found in Title 27. The State Department of Insurance was granted the sole responsibility of administering the Insurance Code and has the duty to regulate insurance matters. It is the duty of the Commissioner of Insurance to organize, supervise, and administer the Department of Insurance so that it will perform its lawful functions. The Commissioner has the specific duty and responsibility of enforcing the provisions of the Insurance Code. See §27-21-1, et seq., Code of Alabama. One of his specific duties is to make sure that insurance policies, as approved, are fair to consumers and do not violate public policy. This is a determination that must be made by the Commissioner before a policy form is approved. The importance of, and need for, this concept will be readily understandable as we further examine the arbitration picture.

In addition to the statutory provisions that govern the Department, the Commissioner has the authority to make reasonable rules and regulations necessary to carry out the provisions of the Insurance Code. Once promulgated, these rules and regulations have the full effect of law. However, the procedure for promulgating rules and regulations is set out in the Code and must be followed. This is obviously for the benefit of consumers who buy insurance policies and depend on the Department to protect their interests. The Insurance Commissioner should never allow the powerful insurance industry to control activities in the Department and must never allow the “regulated companies” to set policy.

## **Hearing and Notice**

Arbitration is obviously a material and significant change in Alabama law. Section 27-2-17, Code of Alabama, requires a public hearing on any matter adversely affecting Alabama Citizens. Notice of such a hearing is required by the Insurance Code. See §27-2-29, Code of Alabama. The Insurance Department gave no notice of the change to arbitration nor was a public hearing ever held. Only when an Alabama policyholder has a dispute with an insurance company would he or she learn about the inclusion of an arbitration clause in the policy.

## Regulation 24

Regulation 24, promulgated by the Insurance Department, prohibits the inclusion of any form or clause in an Alabama insurance policy by an out-of-state company when that form or clause could not be included by that company in its home state. Officials in the Insurance Department in sworn deposition testimony have admitted that this regulation has been routinely violated in the approval of arbitration clauses for out-of-state companies. It is inconceivable that the current Insurance Commissioner will allow this illegal practice to continue. While he has been duly warned, Mr. Cater has taken no action to remedy the situation. No out-of-state insurance company with arbitration clauses should feel comfortable in view of what has transpired. Certainly, no company should be allowed by the Commissioner to enforce the clauses pending a final resolution of the matter in the Courts.

## The *Terminix* Case

Many Alabamians are familiar with what is known as the “*Terminix* case,” which was decided by the U. S. Supreme Court in 1995. Most of the familiarity comes from arbitration clauses in motor vehicle purchases. However, since the purpose of the McCarran-Ferguson Act was to permit the states to regulate the business of insurance without interference from Federal Acts relative to interstate commerce, the case of *Allied-Bruce Terminix Company, Inc. v. Dodson*, 1995 513 U.S.265 (1995) has absolutely no effect on the business of insurance and arbitration clauses. The Courts cannot ignore the Legislative history of the Federal Arbitration Act nor the clear exemption of insurance from federal regulation by virtue of McCarran-Ferguson. It is significant and controlling that McCarran-Ferguson came about subsequent to the FAA. The *Terminix* Court established the framework for determining whether a contract involves interstate commerce for the purposes of the FAA. The *Terminix* decision did not involve insurance in any respect which is undisputed.

Unless Federal law preempts state law, the specific enforcement of an arbitration agreement violates both statutory law and public policy. *Lopez v. Homebuyers Warranty Corporation*, 670 So.2d 35 (Ala.1995). Unfortunately, in most all cases, with the exception of insurance contract cases, Federal law does prevail. At least that is the current view of the U. S. Supreme Court. However, no lawyer in our pending lawsuit has found any U. S. Supreme Court decision dealing with insurance and arbitration. For the Insurance Commissioner to rely on *Terminix* is mind-boggling in view of Governor James’ disdain for federal intrusion on state affairs. Apparently, there is a lack of communication on policy within the Department and perhaps between the Commissioner and the Governor.

## **Public Policy of the State of Alabama**

The Insurance Commissioner should consider whether or not an arbitration clause is fair to consumers and whether or not it violates public policy. See §27-14-9, Code of Alabama. It is rather shocking to learn that Mickey DeBellis (the Commissioner at the time the arbitration clauses were approved) was not only unaware of the approval, but believes that the clauses are unfair to consumers and violate public policy. This appears to be the current position of David Parsons, the Deputy Commissioner, who has testified by deposition and who told the *Wall Street Journal* that this was his belief. Based on all depositions taken of key Insurance Department employees, no person in the Department has ever considered the “fairness” of arbitration to Alabama citizens or whether arbitration is against “public policy” in Alabama.

## **The Arbitration Guidelines**

Perhaps, the most shocking revelation thus far from the depositions taken in our lawsuit, is the testimony of Michael Bownes, the Chief Counsel for the Insurance Department. In Mr. Bownes’ opinion, the Department had no legal authority either in January or in March of this year to issue the guidelines for arbitration. The first guidelines were issued by Mr. Bownes on January 5, 1998, and were mailed out to the insurance industry for implementation. A subsequent set of guidelines was distributed by Mr. Cater in March of this year. If Mr. Bownes is correct, which we believe he is, how can an insurance company from out-of-state attempt to enforce arbitration clauses against Alabama policyholders?

## **The Status of Our Pending Lawsuit**

All of the matters discussed above are involved in the lawsuit before Judge Sally Greenhaw. In a ruling issued on May 8, 1998, Judge Greenhaw allowed our lawsuit to go forward. The Defendants had argued long and hard for an order of dismissal. The Defendants’ contentions were rejected by the Court. Attorney Phil Stano from Washington, D. C., representing 532 Life Insurance Companies, intervened in the lawsuit and appears to be the architect behind the defense team’s strategy. Mr. Stano, along with his defense team, has originally attempted to convince Judge Greenhaw that the Federal Arbitration Act required dismissal of the case. Obviously, the Court disagreed as does the legal team representing Blue Cross before the Alabama Supreme Court. We hope to have a decision from Judge Greenhaw prior to the November elections.

## The Effect of Our Lawsuit

Fortunately our lawsuit brought immediate and widespread attention to the Insurance Department's actions. Since that time, numerous groups and individuals have joined the fray on the side of consumers and against arbitration. These groups and persons include: Christopher Reeve; the Alabama Democratic Conference; Alabama New South Coalition; Alabama Education Association (AEA); Alabama State Employees Association (ASEA); American Federation of Teachers (AFT); Victims of Crime and Leniency (VOCAL); American Association of Retired Persons (AARP - 500,000 Alabama members); Ray Warren, former Claims Superintendent for State Farm Insurance Company; Bobby Payne, Mayor of Tallassee, former President of the Alabama League of Municipalities; Alabama Trial Lawyers Association; American Federation of Labor - Congress of Industrial Organizations (AFL-CIO); Alva Caine, Birmingham Attorney and former President of the Alabama State Bar Association; Mickey DeBellis, former Insurance Commissioner; Democrats for Christian Values; Professor Gene Marsh, University of Alabama Law School; John A. Owens, Tuscaloosa Attorney and former President of the Alabama State Bar Association; Silicone Survivors Support Network; United Mine Workers of America; We the Jury; Earl Goodwin, Former State Senator, Dallas County; Mothers Against Drunk Driving (MADD); Wheelin' Sportsmen of America; Alabama Retired Teachers Association; Escambia County Democratic Executive Committee; Senator Hank Sanders; Senator Charles Langford; Representative John Knight; the Dog Hunters Association; and Rick Sellers, the Chairman of Concerned Citizens, Inc.

Veteran and gifted political writer, Bob Ingram, has been a thorn in the side of the Insurance Commissioner in this matter and deserves a gold star for his courageous stand. Additionally, the nationally renowned financial wizard, Dr. David Bronner, has blasted the Insurance Department's actions. His views carry tremendous weight in Alabama as well as on the national level. Dr. Bronner aptly observed:

“Alabama already has the weakest consumer protection laws in the entire country. Because of the political influences in Alabama, insurance companies, rather than consumers are in charge of the state agency, the State Insurance Department, that is supposed to protect consumers. Clearly, Alabama needs to solve the serious problem of trial lawyers running over businessmen. Clearly, we also do not need to encourage our insurance companies and agents to be thieves.”

As you know, Liberty National Life Insurance Company is a Defendant in our lawsuit. It is most interesting that Liberty National took an official position on the effect of the McCarran-Ferguson Act in a filing with the Insurance Department. This was prior to the recent emergence of the arbitration issue. The company took a position at that time totally contrary to its current position in our lawsuit. This is what Liberty National filed with the Department:

”The regulation of the business of insurance has traditionally been left with the several states. It is the last great industry in this

country, the regulation of which has been largely left to the individual states. The McCarran-Ferguson Act, enacted by Congress more than thirty years ago as a result of the decision of the U. S. Supreme Court in *Southeastern Underwriters* reaffirmed the intent of Congress that the states should continue the regulation of this business.”

It is shocking that Liberty National now takes a position both with the Insurance Department and the Montgomery County Circuit Court that the McCarran-Ferguson Act does not do what they under oath told the Department previously that it did.

There are several insurance agencies in Alabama that have condemned the Insurance Department for its role in bringing about the arbitration crisis. Paul Morris, an agent with the Montgomery-based PCS Insurance Agency, Inc., notified us that one of his insurance companies would be eliminating the arbitration clauses from their policies. This is what Mr. Morris had to say:

“We feel that the decision to remove arbitration clauses is a direct result of the pressure brought to bear by the lawsuit you have pursued against the Department of Insurance. Regardless of the outcome, we are pleased that you are defending the rights of Alabama insurance consumers against those who would seek to subvert them. As both Alabama consumers and insurance agents, we thank you for your efforts in this matter.”

At least one major out-of-state insurance company has withdrawn its request for arbitration with the Insurance Department. This is a direct result of our lawsuit.

### **The Blue Cross Case**

The case of *Shelton v. Blue Cross / Blue Shield of Alabama* was argued in the Alabama Supreme Court on July 6, 1998. This was the first opportunity for the Alabama Supreme Court to face the proper legal issues in an insurance arbitration case. Numerous persons and groups filed briefs in opposition to arbitration in the case. Frank Wilson from our firm and John Owens from Tuscaloosa (a past President of the Alabama Bar Association) argued our side and against arbitration.

Blue Cross took the position that while states had complete control over insurance and the McCarran-Ferguson Act generally controlled arbitration, a special Act of Congress allowed Blue Cross to have arbitration in Medicaid-Gap insurance coverage. This position would allow arbitration in a narrowly defined setting but in no other type of insurance policy. Their argument to the Court conceded as much.

Obviously, we wanted our (*Peterson*) case to be heard and decided prior to the Supreme Court hearing an arbitration case where a proper record in the trial court could be lacking on the proper

issues. However, we were able to get involved in the *Shelton* case soon enough so that the issues were presented to the Court. The facts of *Shelton* were: Blue Cross sold a health insurance policy to Mrs. Shelton (a widow) who was on Medicare and Medicaid. She did not need the policy even though she was paying 25% of her income to Blue Cross as premium payments for the policy. Mrs. Shelton is now 92 years old and has had her policy for seven years. Blue Cross added the arbitration clause last year and now claims that the policyholder, by paying a renewal premium, has waived her right to a jury trial. She never signed anything and did not realize that arbitration was added to the policy.

### **Christopher Reeve**

Christopher Reeve, who could not be in Montgomery for the recent Supreme Court hearing because of scheduling conflicts, asked us to read publicly a statement concerning arbitration at the conclusion of the oral argument in *Shelton*. In his statement, Mr. Reeve observed:

“The idea that binding arbitration should replace the patient’s access to the legal system is completely unacceptable. . . .

“[I] have requested this statement be read on the front steps of the Alabama Supreme Court on July 6, 1998 to publicly state that I am vehemently opposed to binding, mandatory arbitration agreements in insurance disputes. As it is, insurance companies have too much power in this country today. They must not be allowed to take away a victim’s right to justice.”

We have received telephone calls and letters from all over the country concerning Mr. Reeve’s active involvement in the fight against arbitration. Most of the out-of-state contacts are shocked that Alabama would allow arbitration in insurance disputes because the law is clearly to the contrary. We will be eternally grateful for Mr. Reeve’s involvement since it brought nationwide attention to the battle. If insurance companies can treat Christopher Reeve as they have done, how will they treat an average citizen who has a dispute with their company?

### **Conclusion**

Alabamians, not an intrusive federal government, should determine the course that Alabama should take on the arbitration issue. Usurpation of power by what Governor James describes as an all-too-powerful federal judiciary has been soundly criticized by the Governor. Governor James’ administration is solidly against a federal government bent on running roughshod over ordinary citizens. This makes it all the more surprising that the Insurance Commissioner is approving arbitration clauses in insurance policies in violation of the Alabama and Federal Constitutions, as well as numerous other provisions of Alabama law. It is even more surprising that the Commissioner is basing his stand on a federal court decision, which obviously has no application to insurance.

Hopefully, the Alabama Supreme Court will answer all questions relating to arbitration in insurance policies in the *Blue Cross* case. The ball is in their court and the law is very clear.

The application of the McCarran-Ferguson Act is certainly consistent with Governor James' position that states, not the federal government, should control as many aspects of public life as possible. Why is Commissioner Cater not in lock-step with his boss? There is no apparent logical explanation.

The path of our pending lawsuit may likely lead eventually to the U. S. Supreme Court. Hopefully, before that occurs, the Insurance Commissioner will listen to the hundreds of thousands of Alabama consumers who oppose arbitration and put a stop to this insurance-industry-driven movement which is the most devastating anti-consumer attack by Government in recent memory. All of us at Beasley, Wilson believe we are right, according to recent polls, the vast majority of Alabamians agree with us; it is now up to the Insurance Commissioner and the Courts to correct a serious problem.