

Challenge to nonlawyers in insurance arbitrations gets OK

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A lawsuit that argues only lawyers can represent insurance companies in arbitrations will move forward because a superior court judge wants to further explore the dispute.

Attorneys say they believe the case could have major implications for the insurance industry.

Overruling a demurrer on Monday, Los Angeles County Superior Court Judge John S. Wiley Jr., asked attorneys in a bad-faith insurance claim lawsuit to develop a factual record he can use to assess the legality of the widespread practice of non-lawyers handling arbitrations for insurance companies.

“Only then will the court be in a position to determine whether the activities of nonlawyers amount to practicing law,” the judge’s order reads.

Plaintiff’s Attorney Joshua H. Haffner said Monday that the case, which seeks class certification and punitive damages, “has big ramifications, potentially.”

Haffner’s client is Bahru Abdulkadir, who was insured by Infinity Insurance when he was involved in a crash with a customer of Western General Insurance. Abdulkadir was awarded \$1,093 in an arbitration according to Haffner’s complaint, but Infinity sent him \$951.69 and said the remaining \$141.31 went to pay a collection agency Infinity enlisted to handle the arbitration.

That 13 percent fee is illegal, Haff-

ner said, because under California law “only California-licensed attorneys may represent clients at arbitrations.” *Abdulkadir v. Infinity Insurance Company*, BC663995 (L.A. Super. Ct., filed June 5, 2017).

While Wiley’s order means the case moves forward, it dismantled Haffner’s interpretation of a case that’s at the center of his claim, which includes three causes of action: breach of contract, breach of the implied covenant of good faith and bad business practices.

Wiley said Haffner’s reliance on *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119 is “misplaced” because he mistakenly said *Birbrower* establishes that only lawyers can represent insurance companies in the insurance industry’s dispute resolution system.

Birbrower was an issue of geography, not function, regarding whether a New York law firm was practicing in California, Wiley wrote.

“By contrast, the issue in this case is whether functions in this institutional setting are the practice of law,” Wiley wrote. “*Birbrower* did not address that question because everyone in that case agreed *Birbrower* lawyers indeed were practicing law.

“*Birbrower* thus concerned where law was practiced,” Wiley continued. “This case instead is about what is legal practice”.

Infinity is represented by Charles A. Danaher, a partner with Sheppard, Mullin, Richter & Hampton LLP in San Diego. He said Monday that Wiley

encouraged him to bring an early motion for summary judgment.

He was pleased by Wiley’s interpretation of *Birbrower* and said he understands why the judge was hesitant about a demurrer that encompasses a legal question that goes to the heart of the insurance industry. No insurance companies use lawyers in inter-company arbitration, which is internet-based and staffed by claims adjusters.

“He recognizes that essentially it’s a very important case,” Danaher said of Wiley. “I can see why he wants a more developed record before he makes a ruling of that magnitude.”

Wiley said in his ruling that consumer protection is likely to guide his inquiry because “the legislative purpose of attorney regulation was to protect consumers.”

“Shaw said all professions are conspiracies against the public, and there indeed have been examples of attorneys using State Bar regulations to shield themselves from competition beneficial to consumers,” Wiley wrote, citing as an example *Bates v. State Bar of Arizona* (1977) 433 U.S. 350, 367-379.

The judge listed 12 questions he wants answered in a factual record, including:

- 1) Is the incompetence of nonlawyers victimizing insurance companies and their policyholders in this setting?
- 2) For customers, what would be the likely consequences of entirely banning nonlawyers from this work?

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