



COMMONWEALTH OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

November 7, 2016

RULING LETTER NO.: CN-2016-206-AP

TO ALL DOMESTIC INSURERS, FOREIGN INSURERS, AND PROVIDERS OF SERVICE CONTRACTS THAT ARE AUTHORIZED TO DO BUSINESS IN PUERTO RICO

ARBITRATION CLAUSES IN INSURANCE POLICIES AND SERVICE CONTRACTS

Dear Sirs and Madams:

Section 11.190(1)(a) of the Puerto Rico Insurance Code prohibits insurance policies from including clauses that limit access to the courts to decide on controversies related to contracts. Specifically, this section provides the following:

“Limiting actions on policies; jurisdiction

(1) No policy delivered or issued for delivery in Puerto Rico and covering a subject of insurance resident, located, or to be performed in Puerto Rico, shall contain any condition, stipulation, or agreement:

(a) Depriving the insured of right of access to the courts for determination of his rights under the policy in the event of a dispute.”

This section has been interpreted by the Puerto Rico Supreme Court in *Berrocales v. Tribunal Superior*, 102 D.P.R. 224 (1974). In the opinion, the Court stated that in the light of such, arbitration clauses in insurance policies are void.

“In this jurisdiction a clause in an insurance policy requiring arbitration between the insurance company and the insured for the determination of the rights of the parties according to the policy is null and inoperative. Such nullity shall not affect the validity of the other provisions of the policy.”

As specified in Section 21.260 of the Insurance Code, both Section 11.190 and case law are applicable to service contracts.

In this letter we must clarify the standard that governs arbitration clauses for all insurance policies and contracts to be issued in Puerto Rico. For the purpose of ensuring uniformity in the guidelines issued by the OCI, it is established that all arbitration clauses shall contain a statement that indicates that any dispute between the insurer and the insured, or the service contract provider and the holder of the contract, may be resolved through an optional arbitration procedure, provided both parties have expressed their consent in writing. Furthermore, the clause shall indicate that the result of the arbitration process is not binding on the parties, and therefore, any of the parties may go before the courts of law, under Section 11.190 of the Puerto Rico Insurance Code.

Therefore, all insurance policies and service contracts that are currently in effect, regardless of the date of approval by the OCI, shall be amended as provided in this Ruling Letter.

Strict compliance with the provisions of this Ruling Letter is hereby required.

Very truly yours,

SIGNED

Ángela Weyne
Commissioner of Insurance of Puerto Rico