

# Odd Clauses in Insurance Policies Prompt Suits

**LITIGATION:** Regulators decry fine print and ‘bait and switch marketing tactic.’

What would you do if there was a clause in your insurance policy that said if you want to pursue arbitration you’d have to do it in the British Virgin Islands?

That’s what happened to **Luxor Cabs**, a company represented by Woodland Hills law firm **Roxborough Pomerance Nye & Adreani**. Its case against **Applied Underwriters** will go into a hearing early next year, though probably not in the British Virgin Islands.

**Nick Roxborough** of the firm, which represented the San Francisco based Luxor Cabs, said the first step was to ensure that arbitration

will happen in California and not overseas.

That first victory came for the firm last year

when California Superior Court judge ruled that the arbitration clause regarding the British Virgin Islands could not be enforced.

Roxborough Pomerance and Luxor Cab’s arduous case against Applied Underwriters, a subsidiary of **Berkshire Hathaway Inc.**, all started when the cab company purchased a workers’ compensation insurance package in 2012. At the time, an insurance broker recommended Applied Underwriters, as it seemingly had lower rates than other insurance providers.

However, over time Luxor Cabs saw its premiums rise without an explanation from the insurance company. The issue reached the breaking point when an employee died of a heart attack in one of the cabs, and Luxor saw its premiums rise to 10 times more than what the claim



**Workers’ Comp Settlement:** Nick Roxborough, right, with partner Drew Pomerance.

was worth.

It turned out there was an additional agreement attached in the worker’s comp package that detailed the reasoning behind this increase, but Luxor Cabs had no idea about the contents of the agreement, nor did the insurance broker. This prompted Luxor Cabs to retain Roxborough Pomerance.

“The Applied Underwriters’ product was patented,” said Roxborough. “The design of the patent was so that they did not have to file their product with California Department of Insurance.”

Filing the product with the insurance department would have limited Applied Underwriters from including odd arbitration clauses (like going to British Virgin Islands).

Turns out there were similar cases against Applied Underwriters.

Sacramento company **Shasta Linen Supply** also brought a suit against Applied Underwriters. The company alleged that the attached agreement in the workers’ compensation package was a misapplication of what Applied Underwriters was actually selling. While the package seemed to have lower rates, there was an unknown agreement as in the case of Luxor.

The insurance department called this “a bait and switch marketing tactic” by Applied Underwriters. In the end, the court sided with Shasta Linen.

This case prompted the California Department of Insurance to issue a cease and desist order to Applied Underwriters regarding its agreements attached to the workers’ comp product. And just last month, the department reached a settlement, which requires this attached agree-

ment to be reviewed by the department before Applied Underwriters can offer it as part of its workers’ compensation package.

“The settlement is a good first start for policyholders of Applied Underwriters in that it renders the Shasta Linen decision precedential for all policyholders similarly situated to the Shasta Linen plaintiffs,” said Roxborough. “It should also meaningfully reduce the number of issues to be litigated by policyholders.”

## Neurosurgery Board

**Tina Odjaghian** of **Odjaghian Law Group** has been named to the **UCLA** Department of Neurosurgery board of advisors.

The Woodland Hills law firm specializes in catastrophic injury and workers’ compensation litigations. In the past, Odjaghian has worked on cases that included clients with strokes, traumatic brain injury and spinal cord injuries.

The UCLA neurosurgery department is ranked first in southern California by U.S.

News & World Report.

Odjaghian will serve in an advisory capacity on the six-person board occupied by neurology doctors. Odjaghian will participate in educational panels that educate doctors and students on legal issues around catastrophic injuries.

“I look forward to raising community awareness and support as this remarkable neurosurgical team courageously makes the impossible possible one step at a time,” Odjaghian said in a statement.



**Odjaghian**

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