

## ***KD Alert: California Federal Court Upholds Insurance Policy's New York Forum-Selection Clause***

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*A California federal court enforced a professional liability policy's forum-selection clause and transferred pending litigation to New York in the recently decided case of Crown Capital Sec., L.P. v. Liberty Surplus Ins. Corp., No. 8:14-cv-01065 (C.D. Cal. Mar. 30, 2015). Significantly, the Court rejected the argument that California's bad faith laws trump a policy provision selecting New York as the forum for coverage disputes under the policy (Kaufman Dolowich & Voluck, LLP represents the insurance company in this litigation).*

*The insured broker-dealer sued the carrier in the Central District of California, asserting claims for breach of contract, breach of implied covenant of good faith and fair dealing, and declaratory relief. The policy contained a forum-selection clause providing that coverage disputes be litigated in New York, and the insurer filed a motion to dismiss or, alternatively, transfer the action to the Southern District of New York.*

*The insured broker-dealer's primary argument against transfer was the contention the forum-selection clause was unenforceable on public policy grounds. The insured contended the forum-selection clause, taken in tandem with a choice-of-law clause in the same policy, contradicts California's public policy goals as expressed through its insurance laws.*

*The Court rejected this argument for several reasons. First, the fact that the insured viewed New York's remedies as supposedly "less favorable" than those available in California does not present a valid basis to deny enforcement of a forum-selection clause. Second, the insured failed to provide a legal basis for treating its California insurance law claim as an unwaivable right, as it did not identify a California statute or judicial decision that prohibits a party from waiving the right to pursue legal actions. Moreover, the insured failed to demonstrate that any such public policy underlying California's remedies relates to venue. Finally, the Court explained that the insured will still have the opportunity to argue that California law should apply to its claims in the Southern District of New York.*

*With this decision, parties seeking uniform interpretation of insurance contract terms, something that ultimately benefits both policyholders and insurance companies, may take comfort in knowing that forum-selection clauses may be upheld.*

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