Filed 6/29/17 Spector v. Global Aerospace Underwriting Managers CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

STEVEN SPECTOR, as Administrator, etc., et al., Plaintiffs and Appellants, v. GLOBAL AEROSPACE UNDERWRITING MANAGERS, LTD., Defendant and Respondent.	B271085 (Los Angeles County Super. Ct. No. BC 585063)

APPEAL from an order of the Superior Court of Los Angeles County. William F. Fahey, Judge. Affirmed.

Herzog Yuhas Ehrlich & Ardell and Evan D. Marshall for Plaintiffs and Appellants.

Clyde & Co US, Peter J. Whalen, Kathryn C. Ashton and Gabrielle A. Hollingsworth for Defendant and Respondent.

This appeal concerns the proper location to adjudicate insurance coverage issues arising from the fatal crash of a business jet in Egelsbach, Germany in March 2012. Plaintiff and appellant Asia Today, Ltd. (Asia Today), a Hong Kong company, purchased the policy from defendant and respondent Global Aerospace Underwriting Managers (Global). Rainer Schultz, a German citizen who owned Asia Today, was piloting the plane and Jon Felipe DeLeon Jose (Jose) was the copilot. Both were killed.[1]

The policy is written in German and states that it is governed by German law. The policy contains a forum selection clause identifying London, England (where Global is headquartered) or Cologne, Germany (where the policy was issued) as the locations with jurisdiction over actions arising from the policy. The trial court dismissed the action, finding that the forum selection clause was mandatory, not permissive, and that Appellants therefore must pursue their claims in England or Germany.

We affirm. Global submitted uncontroverted evidence in the trial court concerning the meaning and legal significance of the forum selection clause under German law. That evidence, in the form of a declaration from a German lawyer, showed that the

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[1] Along with Asia Today, plaintiffs and appellants in this action include Steven Spector as the administrator of the estate of Rainer Schultz, and Silke Schultz, Rainer's widow, who is the guardian ad litem for their four minor children. Where context requires, we refer to Rainer and Silke by their first names to avoid confusion (with no disrespect intended). We refer to the appellants collectively as "Appellants."

forum selection clause was mandatory. While the meaning of the English translation of the relevant policy provision might be subject to debate, the evidence concerning its significance in the German language under German law was undisputed. We therefore give effect to the parties' intentions as reflected in the language of the policy and conclude that Appellants' action must be pursued in a forum specified in the policy.

BACKGROUND

1. *The Gobal Insurance Policy*

Global issued Aircraft Hull & Liability & Personal Accident insurance policies to Asia Today that were in effect from 2007 to 2012. The policy in effect when the fatal accident occurred (the Policy) was written in German, with some of the provisions set out in English. Portions of the Policy specified whether the German or English text controlled in case of doubt. The Policy contained choice of law and forum selection provisions, written in German. The Policy did not contain any English translation of these provisions.

Using the English translation that Global submitted with its motion to dismiss, paragraph 25 of the Policy stated, "This policy shall be governed by German law." Paragraph 24.1 stated, in part, "For actions against the insurer arising from the insurance policy, the place of the insurer's registered office or of its branch which is responsible for the policy shall have legal jurisdiction."[2] Global's headquarters is in London, England,

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[2] In German, this sentence of the forum selection clause reads as follows: "Für Klagen aus dem Versicherungsvertrag gegen den Versicherer bestimmt sich die gerichtliche Zuständigkeit nach dem Sitz des Versicherers oder seiner für den Versicherungsvertrag zuständigen Niederlassung."

where it is registered. It also has a branch office in Cologne, Germany. The Policy was issued and delivered in Germany.

2. *The Airplane Crash and Subsequent Lawsuits*

Rainer and Jose were the pilot and copilot respectively of a Cessna Citation aircraft that crashed on approach to the airport in Egelsbach, Germany on March 1, 2012. Asia Today owned the aircraft. Rainer, Jose, and a passenger, Suzanne Jaschke, were all killed.

Rainer owned Asia Today, which is a Hong Kong company. Rainer was a German citizen, as is his widow, Silke. Their four children were born in California and are citizens of both the United States and Germany.

Following the accident, probate proceedings concerning Rainer's estate occurred in Germany, Hong Kong, and the United States.[3] In addition, various claims were filed in the United States. The Jose heirs filed a claim against the Rainer estate and

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[3] There are differences in how the parties describe the Schultz's connections to California. Appellants state that Rainer and Asia Today had "substantial business operations in California," and that Rainer's estate in California was opened in part to deal with those operations. They also claim that Silke resided in California in 2012 and spent "only 129 days" outside the United States in that year. On the other hand, Global successfully moved below for judicial notice of a declaration from Silke filed in another action in California concerning a claim by Hartmut Jaschke. In that declaration, Silke objected to jurisdiction on the ground of lack of contacts with California, claiming that Rainer was not a resident of Los Angeles County or anywhere in California at the time of his death, and that they were both residents of Hong Kong. The differences are not important to the resolution of this appeal, and we therefore need not consider them.

Asia Today, asserting liability for Jose's death. In addition, Rainer's estate filed a wrongful death action against the Jose estate and other defendants.

On June 12, 2015, Appellants filed this action against Global and the Jose estate. Appellants claim that they filed the action when the court in Rainer's wrongful death action refused to permit an amended complaint that "alleged the responsibility" of Global to defend the Jose estate, and to "determine GLOBAL's liability to indemnify plaintiffs for settlement of claims arising out of the accident" and "for damages resulting from GLOBAL's denial of coverage."

Appellants' complaint asserted various claims arising from Global's denial of coverage for: (1) the wrongful death claim of the Jose estate against the Rainer estate, and (2) the wrongful death action by the Rainer estate against the Jose estate. The complaint alleged that the Policy provided liability coverage to Asia Today, Rainer, and Jose for the March 1, 2012 accident, and that Global had wrongfully denied coverage based upon a Policy exclusion for "liability incurred by one employee of the insured to another employee."

The complaint asserted four causes of action based upon the alleged wrongful denial of coverage. First, it asserted a claim under Probate Code sections 550, 553, and 554 alleging that, under those sections, Appellants were "entitled to maintain this suit as a direct action" against Global for Rainer's alleged wrongful death and to earn a judgment "directly enforceable" against Global.[4] Second, it sought a declaration that the estate

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[4] Subsequent undesignated statutory references are to the Probate Code.

and heirs of Jose were "entitled to a defense of and indemnity against any liability claims arising out of" the accident. Third, it asserted a breach of contract claim against Global for its denial of coverage and refusal to defend the Rainer estate against the wrongful death claim by the Jose estate. Fourth, it asserted a bad faith claim against Global for that denial of coverage. According to that claim, Global offered to defend the Rainer estate against the Jose claim only on the condition that the Rainer estate waive claims against various corporate defendants, which the complaint alleged that Global also insured. The complaint alleged that the Rainer estate settled that claim without coverage for $734,101.

3. *Global's Motion to Dismiss*

Global filed a motion to dismiss on October 30, 2015, under Code of Civil Procedure section 410.30, subdivision (a) and section 418.10, subdivision (a)(2), along with a demurrer. The motion argued that Appellants' claims should be dismissed based upon the forum selection clause in the Policy, which Global claimed was mandatory, and also on other traditional forum non conveniens grounds, such as the location of witnesses and parties, the law applicable to the dispute, and the connection between California and the events at issue.

Global accompanied its motion with an English translation of pertinent portions of the Policy. The translation included a disclaimer stating that "THIS TRANSLATION IS FOR INFORMATION PURPOSES ONLY AND THE LANGUAGE OF THE ORIGINAL DOCUMENT TAKES PRECEDENCE." The translator's declaration was executed on October 23, 2015, about a week before Global filed its motion.

Global also submitted a declaration from a German lawyer, Thomas Mittendorf. Mittendorf noted that the Policy states that it "shall be governed by German law." He testified that "Paragraph 24.1 requires that jurisdiction for a suit filed against the insurer is permitted *only* before a competent court where the Insurer has its registered office or where the branch office responsible for the policy is located." (Italics added.) He also opined that "Paragraph 24.1 is valid and enforceable under German law."

The trial court held a hearing on the motion on January 19, 2016. The court's tentative ruling was that the forum selection clause was "mandatory, not permissive," and that there was no California public policy that would preclude applying the policy to this case. Following argument, the court affirmed its tentative ruling and found that the "forum selection clause is mandatory." The court did not reach the alternative argument based on other forum non conveniens factors. The court confirmed its ruling in a written order on February 18, 2016.

DISCUSSION

1. *Standard of Review*

Like other contractual provisions, the interpretation of a forum selection clause is a legal question that an appellate court reviews de novo where no conflicting extrinsic evidence has been presented. (*Animal Film, LLC v. D.E.J. Productions, Inc.* (2011) 193 Cal.App.4th 466, 471 (*Animal Film*); *Intershop Communications AG v. Superior Court* (2002) 104 Cal.App.4th 191, 196 (*Intershop*). Here, Global did introduce extrinsic evidence in the form of a translation of the relevant Policy language and expert testimony concerning the status of the forum selection clause under German law. However, as discussed

below, Appellants did not challenge that evidence in the trial court. When the extrinsic evidence is not in conflict, an appellate court independently resolves any conflicting inferences from that evidence and construes the contract as a matter of law. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865–866; *Schaefer's Ambulance Service v. County of San Bernardino* (1998) 68 Cal.App.4th 581, 586.) We therefore review the trial court's decision that the forum selection clause was mandatory under the de novo standard.

We review the trial court's decision to enforce the forum selection clause under the abuse of discretion standard. (*Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 148; *Trident Labs, Inc. v. Merrill Lynch Commercial Finance Corp.* (2011) 200 Cal.App.4th 147, 154 (*Trident Labs*).)[5]

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[5] A minority of courts has employed the substantial evidence standard in reviewing a trial court's decision to enforce a forum selection clause. (See *CQL Original Products, Inc. v. National Hockey League Players' Assn.* (1995) 39 Cal.App.4th 1347, 1354 & fn. 4 (*CQL*).) However, use of that standard has been criticized in light of our Supreme Court's decision in *Smith, Valentino & Smith, Inc. v. Superior Court* (1976) 17 Cal.3d 491 (*Valentino & Smith*), holding that "forum selection clauses are valid and may be given effect, in the court's discretion and in the absence of a showing that enforcement of such a clause would be unreasonable." (*Id.* at p. 496; see *Trident Labs, supra,* 200 Cal.App.4th at p. 154, fn. 3.) We therefore join the majority of courts in employing the abuse of discretion standard to review the trial court's decision to enforce the forum selection clause. However, as discussed above, we also conclude that it is appropriate (and consistent with our prior precedent) to use traditional contract interpretation principles—including de novo review when there is no contested extrinsic evidence—to *interpret*

2. *Uncontroverted Evidence Showed That the German Language Forum Selection Clause, Interpreted Under German Law, Was Mandatory*

Code of Civil Procedure section 410.30, subdivision (a) permits a court to stay or dismiss an action when the court finds that "in the interest of substantial justice an action should be heard in a forum outside this state." That section provides a statutory mechanism for the application of the doctrine of forum non conveniens. (*Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 749–750.)

"Forum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere." (*Stangvik v. Shiley Inc.*, *supra*, 54 Cal.3d at p. 751.) In applying the doctrine, a court may consider a variety of factors concerning the relation of the parties, witnesses and claims to the forum to determine whether the action would more appropriately be adjudicated elsewhere. (*Ibid.*) In a contract case, one of those factors is whether the parties themselves identified a forum to resolve claims arising from the contract. (*Animal Film, supra,* 193 Cal.App.4th at p. 471; *Berg v. MTC Electronics Technologies Co.* (1998) 61 Cal.App.4th 349, 352–353 (*Berg*).)

Our Supreme Court has held that a forum selection clause in a contract should be given effect unless enforcement of the clause would be unreasonable. (*Valentino & Smith, supra,* 17

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the forum selection provision, including whether the parties intended it to be mandatory or permissive. (*Animal Film, supra,* 193 Cal.App.4th at p. 471.)

Cal.3d at pp. 495–496.) Thus, where a forum selection clause exists, a threshold question in determining whether dismissal is appropriate is whether the clause is permissive or mandatory. (*Animal Film, supra,* 193 Cal.App.4th at p. 471.) "A mandatory clause ordinarily is 'given effect without any analysis of convenience; the only question is whether enforcement of the clause would be unreasonable.' " (*Ibid.*, quoting *Intershop, supra,* 104 Cal.App.4th at p. 196.) However, if a forum selection clause merely provides that a party submits to jurisdiction in a particular forum and does not mandate that the forum is exclusive, the clause is only one among the many factors that may be considered in a forum non conveniens analysis. (*Animal Film,* at p. 471; *Berg, supra,* 61 Cal.App.4th at p. 353.)

"While insurance contracts have special features, they are still contracts to which the ordinary rules of contractual interpretation apply." (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) Like other contracts, an insurance contract is interpreted with the goal of giving effect to the mutual intention of the parties. (*Ibid.*)

Expert testimony about the "ordinary meaning" of a policy's words is not generally relevant to the court's interpretation of policy language. (*Suarez v. Life Ins. Co. of North America* (1988) 206 Cal.App.3d 1396, 1406–1407.) However, when a policy is written in a language other than English, and especially when it employs legal terms that are subject to foreign law, a court needs help to interpret its meaning. (See Civ. Code, § 1644 ["The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must

be followed"].) Parol evidence in the form of expert testimony about the meaning and effect of the foreign language is therefore necessary and appropriate. (See *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 401 [a document in a foreign language is "obviously" a "fit subject for parol evidence"]; *Reamer v. Nesmith* (1868) 34 Cal. 624, 628 ["Mercantile terms, abbreviations, words of a foreign language, technical and scientific terms, not generally understood, may be explained by parol evidence, if otherwise unintelligible to the Court"].)[6]

The forum selection and choice of law provisions in the Policy had no accompanying English translation.[7] Global

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[6] Although the Policy provides that it shall be governed by German law, "[t]he law of the forum controls the rules of evidence." (*Pfingsten v. Westenhaver* (1952) 39 Cal.2d 12, 19.) Moreover, nothing in the record indicates any conflict between California and German legal procedures for interpreting contracts. (See *Nedlloyd Lines B.V. v. Superior Court* (1992) 3 Cal.4th 459, 469, fn. 7 [applying California law to interpretation of choice-of-law provision where the parties did not provide any evidence of the foreign law on the issue]; Evid. Code, § 311, subd. (a).) We therefore apply California law to the procedure for interpreting the Policy.

[7] Without any citation to the record, Appellants refer to the Global translation as a "pre-dispute" translation and argue that it is the most persuasive evidence of the meaning of the language for that reason. However, Global claims that it prepared the translation for purposes of its motion; the record shows that the translator verified the translation after Appellants had filed their action and only a week before Global filed its motion; and the copies of the Policy in the record do not contain any English translation of the German forum selection and choice of law provisions. Moreover, Global provided the English translation subject to the proviso that the original language of the Policy

therefore introduced two items of parol evidence below—without objection—to assist the court in understanding the meaning and legal effect of those provisions. One was the English language translation; the other was the Mittendorf declaration. Appellants focus exclusively on the precise language of the translation, and argue that the specific language is similar to other cases in which courts in the United States have concluded that the English phrase directing that a particular court "shall have jurisdiction" is permissive rather than mandatory. Appellants also argue that we should ignore Mittendorf's conclusions because they are unsupported and unreliable. We reject Appellants' approach for several reasons.

First, German law governs interpretation of the contract. Appellants argue that the Mittendorf declaration does not demonstrate any conflict between German law and California law concerning the mandatory nature of the forum selection clause, but that is manifestly not true if Appellants' interpretation of California law on this point were accepted. Mittendorf states that the forum selection clause is mandatory under German law. That stands in stark contrast to Appellants' argument that California law treats the language of the clause as permissive.

It is true, as Appellants argue, that Mittendorf explains his conclusions using the language of Global's English translation. That is understandable given his audience. However, even if one assumes that Global's translation captured all of the subtleties of language that might be relevant to the provision's status as mandatory or permissive under German law (which, as discussed

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controlled. We therefore reject Appellants' characterization of Global's translation as "the meaning intended at the time the policy was delivered."

below, is an assumption we do not make), that simply leads to the conclusion that German law treats the same language differently.

Second, Mittendorf's testimony is uncontradicted. Appellants challenge the basis and credibility for his testimony on appeal, but they did not make that argument below. Although Global argued below that German law controlled and cited the Mittendorf declaration as the explanation of that law, Appellants did not object to the admissibility of the declaration and they did not challenge its reliability. Nor did they introduce any evidence of their own concerning the effect of German law on the forum selection clause.

We will not consider Appellants' challenge to the sufficiency or weight of the Mittendorf declaration for the first time on appeal. (*Westcon Construction Corp. v. County of Sacramento* (2007) 152 Cal.App.4th 183, 194 [" 'Ordinarily the failure to preserve a point below constitutes a waiver of the point' "], quoting *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.) Had Appellants made such arguments below, Global would have had an opportunity to address them and the trial court would have had the occasion to resolve any conflicts in the extrinsic evidence. In the absence of contrary evidence, we have no reason to reject Mittendorf's testimony concerning the mandatory status of the forum selection clause under German law. (See *Intershop, supra,* 104 Cal.App.4th at p. 197 ["The record contains undisputed evidence that under German law the forum selection clause would be mandatory"].)

Third, even if German law were precisely the same as Appellants' interpretation of California law with respect to the "shall have jurisdiction" language, we reject Appellants'

argument that we must rely unquestioningly on the precision of the English translation that is in the record. We have no reason to doubt its basic accuracy, especially since Global provided it and neither party challenges it. But we also do not assume that it is precise to the degree necessary to support the fine parsing of the English language that underlies Appellants' argument.[8]

Global proffered the translation with the express proviso that it was for "information purposes only" and that the "language of the original document takes precedence." Moreover, this is an area in which subtleties matter, especially in view of the potential differences between the relevant *legal* concepts in English and German. For example, the word "jurisdiction" is obviously legal. American lawyers and judges might interpret the term to mean a court's authority to decide a controversy. (See, e.g., Black's Law Dict. (6th ed. 1990) p. 853, col. 1 [Jurisdiction is "the power of the court to decide a matter in controversy"].) But a possible understanding is also the place where a controversy is decided. (See, e.g., Webster's New World College Dict. (5th ed. 2014) [including as one of the definitions of jurisdiction "the territorial range of authority"].)

A difference in understanding of the legal term might also affect the translation of other language used to describe it.

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[8] Appellants cite several federal cases holding that statements made through an interpreter may constitute admissions for hearsay purposes. (*United States v. Nazemian* (9th Cir. 1991) 948 F.2d 522, 526; *United States v. Sanchez-Godinez* (8th Cir. 2006) 444 F.3d 957.) These cases do not support the conclusion that a court cannot question the precision of a translation offered by a party subject to the "language of the original document."

Consider, for example, the possible differences in meaning between the English terms "shall have legal jurisdiction" and "shall be the legal jurisdiction." The former might more appropriately apply to jurisdiction as the *power* to decide; the latter might more appropriately apply to jurisdiction as the *place* where a decision should be made. Both phrases use the mandatory word "shall," but with potentially different effect that a lay translator might not fully appreciate.[9] Given the complexities of translation, we decline to substitute our understanding of a specific English phrase under the laws of this country for Global's uncontroverted evidence of German law.

Thus, Appellants' reliance on cases interpreting the specific English term "shall have jurisdiction" under the law of California and other states is misplaced. (See, e.g., *Hunt Wesson Foods, Inc. v. Supreme Oil Co.* (9th Cir. 1987) 817 F.2d 75, 77–78.) Rather, we accept the undisputed evidence of the significance of the German language forum selection clause in the Policy under German law.

3. *The Trial Court Properly Ruled That the Forum Selection Clause Does Not Contravene California Public Policy and Should Be Enforced*

In light of the significance given to contracting parties' decision to elect a forum, "the courts have placed a substantial burden on a plaintiff seeking to defeat such a clause, requiring it to demonstrate enforcement of the clause would be unreasonable under the circumstances of the case." (*CQL*, *supra*, 39

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[9] To be clear, we use these examples as hypothetical illustrations only, not to suggest that any particular language is a more accurate translation of the original German (which would be beyond the capacity and function of this court).

Cal.App.4th at p. 1354.) One way of doing so is to show that it would "bring about a result contrary to the public policy of the forum." (*Ibid.*) Because a contractual forum selection provision embodies the parties' agreement to waive the right to litigate in another forum, to reverse a trial court's decision enforcing the parties' agreement the public policy at issue must have some public element that the parties may not waive. (See Civ. Code, § 3513 ["Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement"]; *America Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1, 15 (*AOL*); *Hall v. Superior Court* (1983) 150 Cal.App.3d 411, 418 (*Hall*).)

Appellants argue that enforcing the forum selection clause here would contravene the policies underlying sections 550 through 554. Those sections provide a procedure for filing or continuing an action against a decedent's estate that is "protected by insurance." (§ 550, subd. (a).) A plaintiff may commence or continue such an action without joining the decedent's personal representative or successor in interest, so long as the plaintiff seeks damages that are within the limits of the insurance (or waives any damages in excess of the policy limits). (§§ 550, subd. (a), 554, subd. (a).)

Appellants argue that this procedure reflects a policy to "relieve estates of the duty to defend" and contemplates adjudicating coverage "in the liability action itself" when an action involves a decedent's estate. Appellants claim that the purpose is to protect the insured estate's interest in confirming the duty to defend to "provide to the insured the full benefits due under the policy."

Appellants do not cite any authority showing that this was the goal of sections 550 through 554. In fact, it appears that the Legislature adopted those sections to protect plaintiffs, not policyholders. The sections (and their predecessors) made it unnecessary for plaintiffs to file a claim against the estate of a deceased defendant when an action was defended by an insurance company. This addressed what had been a "serious problem" in such cases. (14 Witkin, Summary of Cal. Law (10th ed. 2016) Wills and Probate, § 631, p. 716.) "Death of the defendant was often unknown to counsel for the plaintiff and not disclosed by the defense. The result was that a meritorious action might be lost for failure to file the claim, even though the object of the claims statute was in no way contravened, for recovery was sought from the insurer and not the assets of the estate." (*Ibid.*)

Appellants' contention that these sections reflect a public policy that coverage issues in cases involving a decedent's estate be decided in the liability action is also contradicted by the statutory scheme. The procedure described in sections 550 through 554 does not apply to all actions against estates: It is limited to those situations in which a plaintiff's claim does not exceed the amount of insurance coverage. (§ 554, subd. (a).) Moreover, section 553 provides that an insurer "may deny or otherwise contest its liability in an action under this chapter *or by an independent action.*" (§ 553, italics added.)

Even if sections 550 through 554 did embody the policies Appellants suggest, Appellants provide no reason to conclude that those policies reflect a public purpose that is *unwaivable*. On its face, the claim that a statutory procedure is intended to

protect policyholders appears to describe a procedure that a policyholder may waive.

Appellants also argue that enforcing the forum selection and choice of law provisions here would violate public policy by denying them the right to California's remedies for bad faith breach of an insurance contract. They claim that "insurer bad faith may rise to the level of a public offense implicating critical state policies."

Our Supreme Court's decision in *Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495 (*Boghos*) is inconsistent with that claim. In that case, the court held that an arbitration provision in a disability insurance contract could be enforced, concluding that the contract did not implicate a statutory public policy that must be protected by guaranteeing certain procedural safeguards (including precluding responsibility for arbitrators' fees). (*Id.* at p. 506, citing *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 100–102.) In so doing, the court rejected the proposition that insurance bad faith claims embody a statutory public policy precluding their waiver. (*Boghos*, at p. 507.) "While the business of insurance is sufficiently affected with a public interest to justify its regulation by the state [citation] . . . , the fact of regulation does not suffice to demonstrate that any given insurance-related claim entails an unwaivable statutory right." (*Ibid.*)[10]

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[10] Appellants cite several federal district court decisions in support of their contention that the remedy available under California law for insurance bad faith reflects a fundamental California public policy sufficient to override a forum selection provision. (*Tri-Union Seafoods, LLC v. Starr Surplus Lines Ins.*

In addition, even if a fundamental California policy were at issue, Appellants have failed to demonstrate that California courts have an interest in protecting that policy in this case that is sufficient to override the parties' agreement. Appellants' argument that enforcing the *forum* provision would undermine legal protections for insureds depends upon the assumption that the same or similar protections would not be available under German law.[11] Thus, Appellants' argument is really a challenge to the choice of law provision. However, Appellants have failed to meet their burden to show that the choice of law provision is unenforceable.

When a party challenges a contractual choice of law provision, the party resisting the challenge must first show that "the chosen state has a substantial relationship to the parties or their transaction, or that a reasonable basis otherwise exists for the choice of law." (*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 917.) Once such a showing is made, "the parties' choice generally will be enforced unless the other side can establish both that the chosen law is contrary to a fundamental policy of California *and* that California has a materially greater

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Co. (S.D.Cal. 2015) 88 F.Supp.3d 1156; *Connex R.R. LLC v. AXA Corp. Sols. Assurance* (C.D.Cal. 2016) 209 F.Supp.3d 1147.) We do not find these opinions persuasive, as they did not consider our Supreme Court's decision in *Boghos*.

[11] Here, as in *Hall*, the forum selection and choice of law provisions are linked, as the combination of the two would mean that California law would not be applied in the contractually mandated forum. (See *Hall*, *supra*, 150 Cal.App.3d at p. 416; see also *AOL*, *supra*, 90 Cal.App.4th at p. 13.)

interest in the determination of the particular issue." (*Ibid.*, italics added.)[12]

There is no question that German law has a substantial relationship to the parties and the insurance policy at issue. The policy was issued in Germany to a company owned by a German citizen. Of course, the accident at issue also occurred in Germany.

In light of that relationship, Appellants must show that application of German law would contravene a fundamental policy of California. Even if California's insurance bad faith remedies implicated a fundamental state policy, Appellants did not provide any evidence showing that the remedies available under German law are so different as to undermine that policy. Indeed, they introduced no evidence concerning German law at all.

Nor have Appellants shown that, if such a conflict exists, California has a materially greater interest in applying its law in this case. Apart from Rainer's minor children, all the parties seeking relief are citizens of other countries. The Policy was issued in Germany by a British company. The accident occurred

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[12] Appellants argue that Global had the burden here to show the reasonableness of the forum selection clause because the clause threatened enforcement of their "statutory rights and remedies." However, the authorities on which they rely for that proposition require the defendant to assume the burden when a California statute with an express anti-waiver provision is at issue. (*AOL*, *supra*, 90 Cal.App.4th at pp. 9–10 [Consumer Legal Remedies Act, Civ. Code, § 1750 et seq.]; *Wimsatt v. Beverly Hills Weight etc. Internat., Inc.* (1995) 32 Cal.App.4th 1511, 1513–1514 [Franchise Investment Law, Corp. Code, § 31000 et seq.].) No such statute is involved here.

in Germany. The only relevant connections to California stem from the fact that several estates of persons insured under the Policy chose to file suit here (against each other).[13]

Appellants cite no cases supporting a "materially greater interest" by California in adjudication of the insurance claims based upon such an attenuated relationship to this state. We therefore conclude that Appellants may not avoid the effect of the forum selection clause in this case simply because they have asserted a bad faith claim.

The trial court acted within its discretion in deciding to enforce the forum selection provision, and we therefore affirm the trial court's dismissal of this action.

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[13] We are not persuaded by Appellants' argument that California has an interest in the administration of estates under the Probate Code. While that may be so, Appellants do not provide any reason to conclude that insurance bad faith claims implicate any more significant public policy when asserted by a decedent's estate than when asserted by living policyholders.

DISPOSITION

The trial court's order is affirmed. Global is entitled to its costs on appeal.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.