

Nursing Homes Finally Score a Victory: the Supreme Court of the United States Rules that States May Not Treat Arbitration Agreements Differently than Other Contracts

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As blogged about before, the nursing home industry has long been under fire for the arbitration agreements used as part of the industry's admissions process. Yesterday, in a victory for the industry, the Supreme Court of the United States found that states could not treat arbitration agreements differently than they would any other contracts, and that singling out arbitration agreements for disfavored treatment was a violation of the Federal Arbitration Act.

This case involved a common scenario for nursing homes. During admission to a skilled nursing facility, the residents' agents under power of attorney executed all of the usual admissions paperwork, including an arbitration agreement that prohibited bringing any potential disputes to court. The residents passed away, and the families instituted wrongful death actions against the nursing home. The nursing home moved to dismiss the cases based on the arbitration agreement.

The trial court denied the nursing home's motions to dismiss. This decision was upheld by both the Kentucky Court of Appeals and the Kentucky Supreme Court, finding that the language of the power of attorney instrument did not *expressly* authorize the agent to enter into an arbitration agreement. This is despite language in the power of attorney instrument that the agent had the authority to make "contracts of every nature in relation to both real and personal property."

The United States Supreme Court found that Kentucky's rule failed to put arbitration agreements on an equal plane with other contracts. In doing so, that rule violated the Federal Arbitration Act, which requires arbitration agreements to be on equal footing with other contractual agreements.

A copy of the Supreme Court's decision is available here: https://www.supremecourt.gov/opinions/16pdf/16-32_o7jp.pdf

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