

A Long Term Care and Seniors Housing Law Update

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Washington Court of Appeals Holds That Wrongful Death Claims Are Not Subject to Arbitration Agreement

A Washington Court of Appeals ruled that the wrongful death claims brought by the heirs of a nursing home resident were not subject to binding arbitration. In a significant set-back to advocates of negotiated arbitration between long term care providers and their residents, the Court held that an arbitration agreement between a resident and a long term care facility is not binding on wrongful death beneficiaries unless the beneficiaries also sign the agreement.

In *Woodall v. Avalon Care Center Federal Way, LLC*, No. 62894-1-I (Wash. App. Div. 1, May 10, 2010), Henry Woodall, age 86, moved into Avalon Care Center in October of 2006. Upon his admission, he voluntarily signed a "Resident and Facility Arbitration Agreement," in which he agreed to submit to binding arbitration any dispute arising out of his stay or the care he received at Avalon. The Arbitration Agreement bound "all persons," including "any spouse, children or heirs" of Mr. Woodall.

After Mr. Woodall died on July 28, 2007, his son sued Avalon. Mr. Woodall's son brought both survivorship claims on behalf of his father, and wrongful death claims on behalf of Mr. Woodall's heirs. Avalon moved the trial court to compel Mr. Woodall's son to participate in binding arbitration pursuant to the Arbitration Agreement. The court denied Avalon's request in part. The court ruled that Mr. Woodall's survivorship claims had to proceed in arbitration, but that the wrongful death claims did not.

The Court of Appeals upheld the trial court's ruling. The Court began with a basic principle: "[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." With that principle in mind, the Court held that the survival action was essentially Mr. Woodall's own claim, and that it was therefore covered by Mr. Woodall's Arbitration Agreement with Avalon. The Court held that the wrongful death action, on the other hand, was a separate cause of action that belonged exclusively to Mr. Woodall's heirs. "A cause of action for wrongful death is not one which ever belonged to the decedent." Since Mr. Woodall's beneficiaries were not parties to the Arbitration Agreement, the Court concluded that the wrongful death claims were not subject to binding arbitration.

Avalon argued that public policy considerations favoring arbitration and resolution of claims in one forum required arbitration of the wrongful death claims. The Court acknowledged that, while those considerations were important, freedom of contract was more important: "The strong

policy favoring arbitration does not overcome the policy that one who is not a party to an agreement to arbitrate cannot generally be required to arbitrate."

The Court's decision in *Woodall v. Avalon Care Center* creates notable hurdles for long term care and seniors housing operators seeking to arbitrate claims. Most existing pre-dispute arbitration agreements with residents will no longer apply to the claims of wrongful death beneficiaries, regardless of the language of the agreement or the parties' intent. Moreover, as in *Woodall*, where a resident's heirs bring both survivor and wrongful death claims, those claims may now be decided separately by a trial court and arbitration panel respectively. In addition to added cost, this prospect raises the possibility of inconsistent rulings or even a "race to judgment" by the parties.

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