

## **California Supreme Court Holds That Heirs in a Wrongful Death Action Are Bound by Decedent's Agreement to Arbitration**

### ***Product Liability Advisory***

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California courts have long wrestled with the question of whether a person's agreement to arbitration binds his or her heirs in a later wrongful death action arising out of his or her death. The California Supreme Court's recent decision, *Ruiz v. Podolsky*, 2010 Cal LEXIS 8292 (Cal. Aug. 23, 2010), settles the issue, at least in cases of medical negligence, in favor of binding heirs to their decedent's arbitration agreements in wrongful death actions, provided the arbitration agreement's language is sufficiently broad to include claims for wrongful death.

The plaintiffs in *Ruiz* were the surviving spouse and adult children of a man whose death was attributed to negligent medical care by the defendant, an orthopedic surgeon. When the decedent engaged the defendant's services, he signed a "Physician-Patient Arbitration Agreement," which professed to bind "all parties whose claims may arise out of or relate to treatment or service provided by the physician including any spouse or heirs of the patient and any children, whether born or unborn, at the time of the occurrence giving rise to the claim." *Ruiz* at p. 3.

The defendant responded to the plaintiffs' wrongful death complaint by seeking to compel all plaintiffs to submit to arbitration in accordance with their decedent's agreement to do so. The plaintiff spouse conceded she was subject to her husband's arbitration agreement under existing California case law, but the adult children argued they could not be forced to arbitrate their claims in the absence of consent. The defendant countered that the adult children, although they had not consented to arbitration, should have their claims "swept up" into arbitration with their mother's claims to fulfill California's "one action rule" for wrongful death claims, which requires that all claimants join claims for the wrongful death of a single person in a single lawsuit.

In reaching its decision, the Supreme Court reviewed prior California case law on this question, which varied widely in its approach to the issue. For instance, under prior case law, a spouse or minor child could be held subject to the decedent's arbitration agreement on the theory that the decedent acted as his or her agent in securing health care when the decedent entered into the agreement. See *Hawkins v. Superior Court*, 89 Cal. App. 3d 413, 418-419 (1979). Conversely, adult children were generally not held subject to an arbitration agreement to which they were not a party. See *Buckner v. Tamarin*, 98 Cal. App. 4th 140 (2002). Nevertheless, claims by adult children could be joined in arbitration with claims of a spouse or a minor to satisfy California's "one action rule" for wrongful death actions. See *Herbert v. Superior Court*, 169 Cal. App. 3d 718 (1985).

Ultimately, the Supreme Court in *Ruiz* opted for a straightforward rule requiring all third-party heirs to submit their claims to arbitration, provided the language of the arbitration agreement reflects an intention to include wrongful death claims. The court based its decision, in part, on its interpretation of Code of Civil Procedure section 1295, which specifies requirements for any agreement between a

patient and health care provider that requires arbitration of disputes related to the provider's "professional negligence." The court concluded that Section 1295's language reflected a clear legislative intent to provide for arbitration of not only a patient's personal injury claims, but also of wrongful death claims by the patient's heirs.

The court also looked to broader considerations of fairness, practicality, and privacy as support for its decision. For obvious reasons, requiring consent by a patient's heirs in order to create an enforceable and comprehensive arbitration agreement would be impracticable and unduly intrusive into the patient's privacy. Furthermore, arbitration is encouraged under the law as a means of reducing court congestion and providing for a more expedient and cost-effective means of dispute resolution. A rule that encourages arbitration of professional negligence claims and binds health care providers and patients to arbitration, yet leaves third-party heirs free to assert identical claims for professional negligence in court, is one-sided, unfair and undermines the cost-saving goal of arbitration.

The *Ruiz* decision, although ostensibly limited to cases of medical negligence, may potentially have a broader application. Other jurisdictions that have considered the issue have differed in their approach depending on whether under their law a wrongful death claim is characterized as being an independent or a derivative cause of action. For instance, the Texas Supreme Court in *In re Labatt Food Service*, 279 S.W. 3d 640 (2009), held that heirs are bound by the arbitration agreements of their decedents, because their rights are derived from those of the decedent. Conversely, in *Bybee v. Abdulla*, 189 P. 3d 40, 43 (Utah 2008), the Utah Supreme Court reached the opposite conclusion based partly on the fact that a wrongful death cause of action is considered an "independent" cause of action under Utah law.

California law characterizes wrongful death claims as independent, yet as the Supreme Court recognized in *Ruiz* wrongful death claims are in many respects derivative of the rights of the decedent. For instance, substantive defenses that could have been asserted against the decedent may be asserted against his or her heir's wrongful death claims. *Madison v. Superior Court*, 203 Cal.App.3d 589, 600 (1988). Indeed, as the Supreme Court pointed out in *Ruiz*, where a decedent has entered into an enforceable agreement to waive the defendant's negligence and assume the risk of his or her actions, that waiver can be enforced as a complete defense to a wrongful death claim by his or her heirs. If a decedent can agree to completely extinguish the rights of his or her heirs, why then should he or she not be able to bind them to an arbitration agreement that does no more than establish a procedure by which their claims can be resolved.

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