

## **U.S. Supreme Court to Weigh In On the Use of Nursing Home Arbitration Agreements**

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In yet another recent legal development regarding the use of arbitration agreements by nursing home owners and operators in connection with nursing home claims by residents against the nursing home, the United States Supreme Court has agreed to accept a decision from the Kentucky Supreme Court regarding the validity of nursing home arbitration agreements. This follows recent actions by the Florida Supreme Court and the Centers for Medicare and Medicaid Services regarding the use of such agreements by nursing homes.

In the Kentucky case, the daughters of two former nursing home residents signed admission paperwork for their parents, including contracts which required all claims against the nursing homes be subject to binding arbitration. After their parents died at a nursing home, the two daughters sued the owner and operator of the nursing home, a subsidiary of Kindred Health, in Kentucky state court, asserting state law claims for negligence and wrongful death. Kindred argued to both the trial court as well as Kentucky's Supreme Court that the plaintiffs were required to arbitrate their claims pursuant to the terms of the contracts signed by the nursing home residents' daughters. Kentucky's Supreme Court disagreed and said the arbitration agreements in those contracts violated the deceased nursing home residents' "God-given" right to litigate any disputes. The Kentucky Supreme Court further noted that it would be "strange" to allow an individual to waive someone else's rights through a binding contract. Instead, the court noted that the deceased nursing home residents would have needed to give their daughters a power of attorney which specifically included the right to enter into arbitration agreements in order for the arbitration agreements to be enforceable. The court therefore invalidated the arbitration agreements and determined the cases should be allowed to proceed in Kentucky state court.

In its petition for certiorari to the United States Supreme Court, Kindred asked the Court to consider whether the Federal Arbitration Act preempted the Kentucky state court's decision under state law. The company further noted that both daughters had power of attorneys for their deceased parents at the time the daughters signed the arbitration agreements in question.

A decision on this case in a hotly contested area of the law is expected by the end of the Supreme Court's term in June 2017.