

March 2012

US Supreme Court Rejects State Public Policy Grounds for Refusing to Enforce Arbitration Agreements Under the FAA

By Henry Lederman, Douglas Wickham, and Sam Sani

In *Marmet Health Care Center, Inc. v. Brown*, the Supreme Court of the United States (SCOTUS) overruled the West Virginia Supreme Court's refusal to enforce a predispute arbitration agreement governed by the Federal Arbitration Act (FAA) based upon a state public policy prohibiting arbitration of claims alleging personal injury or wrongful death against nursing homes. In a *per curiam* decision, the SCOTUS reaffirmed its decision in *AT&T Mobility LLC v. Concepcion*, and again made clear that "[w]hen the state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA."

The Federal Arbitration Act establishes a strong federal mandate in favor of enforcing and upholding arbitration agreements in employment and other types of disputes. The SCOTUS has interpreted the FAA on many occasions and has consistently reaffirmed that, in the FAA, Congress declared a national policy favoring arbitration and withdrawing the power of the states to require a judicial forum for the resolution of claims which contracting parties agreed to resolve by arbitration.

Despite the clarity of the FAA's plain language and the consistent holdings in SCOTUS decisions, some states (through legislation or judicial decisions) refuse to enforce predispute arbitration agreements involving certain types of state law claims ostensibly based upon a public policy requiring resolution of such claims in a judicial or administrative, and not an arbitral, forum.

Marmet Health Care Center arose from three negligence lawsuits against nursing homes in West Virginia. One such lawsuit was brought by Clayton Brown, who sued a nursing home for negligence when a family member who was a patient in the nursing home died while under the care of its staff.

Brown, however, signed a contract with the nursing home which required that all disputes (other than collection cases) be resolved through binding arbitration before the American Arbitration Association. After Brown sued the nursing home in state court, the trial judge dismissed the case on the ground that Brown was bound by the agreement to arbitrate. Thereafter, Brown appealed and the state supreme court reversed, holding "as a matter of public policy under West Virginia law, an arbitration clause in a nursing home admission agreement adopted prior to an occurrence of negligence that results in personal injury or wrongful death, shall not be enforced to compel arbitration of a dispute concerning negligence." In so holding, the state supreme court expressly

examined whether this state public policy was pre-empted by the FAA but concluded that it was not, describing prior SCOTUS decisions interpreting the FAA as “tendentious” and “created out of whole cloth.”

In an unsigned, *per curiam* decision, the SCOTUS reversed, concluding that “[t]he West Virginia court’s interpretation of the FAA was both incorrect and inconsistent with the clear instruction in the precedents of this Court.” The Court went on to explain, “West Virginia’s prohibition against predispute agreements to arbitrate personal injury or wrongful death claims against nursing homes is a categorical rule prohibiting arbitration of a particular type of claim, and that rule is contrary to the terms and coverage of the FAA. [citations omitted].”

In light of its strong reaffirmance of the supremacy of the FAA’s prerogatives over those of states, *Marmet Health Care Center* casts more doubt on the continuing vitality of several California state court decisions refusing to enforce predispute arbitration agreements involving various state public policy-based claims. For example, in *Broughton v. Cigna Healthplans*, the California Supreme Court held that claims for injunctive relief under the Consumer Legal Remedies Act (“CLRA”) are not arbitrable in light of the state public policy of remedying public wrongs under the CLRA in court. In *Cruz v. PacifiCare Health Systems, Inc.*, the California Supreme Court extended the *Broughton* rule and refused to enforce arbitration agreements involving claims for injunctive relief under California Business and Professions Code sections 17200 and 17500 et seq., again on state public policy grounds. Likewise, in a 2011 decision, *Brown v. Ralphs Grocery Co.*, a California state appellate court relied upon the *Broughton* rule and refused to enforce a predispute arbitration agreement on public policy grounds because the arbitration agreement included a waiver of representative claims under California’s Private Attorney General Act (PAGA).

Like the West Virginia Supreme Court, in each of these cases, the California courts relied upon state public policies as the basis for refusing to enforce predispute arbitration agreements. In view of the summary reversal in *Marmet Health Care Center*, it can be expected that these California decisions will come under further judicial scrutiny in cases involving the enforcement of arbitration agreements governed by the FAA.

Henry Lederman and Douglas Wickham are Shareholders in Littler Mendelson’s offices in Walnut Creek and Los Angeles, respectively, both are members of the firm’s Alternate Dispute Resolution Practice Group, and Mr. Lederman is the Co-Chair of the ADR Practice Group. Sam Sani is an Associate in Littler Mendelson’s Los Angeles office. If you would like further information, please contact your Littler attorney at 1.888.Littler or info@littler.com, Mr. Lederman at hlederman@littler.com, Mr. Wickham at dwickham@littler.com, or Mr. Sani at ssani@littler.com.