Arbitration: Medicare/Medicaid Funding For Nursing Homes Is Interstate Commerce, Arbitration Clause Enforceable.

The Supreme Court of Alabama has ruled that admission to a nursing home is a transaction that has a substantial effect on interstate commerce.

The logic of this ruling is that the Interstate Commerce Clause and the Supremacy Clause of the US Constitution require state courts to follow the Federal Arbitration Act and enforce arbitration clauses in nursing home admissions contracts any time a liability suit is filed against a nursing home with such a clause in its admission contract.

This is an emerging area of the law that has not been clearly delineated by other states or the Federal courts. But it is far more than an abstract discussion of dry legal technicalities.

Plaintiffs' Lawyers Want Juries

In the real world, a plaintiffs' trial lawyer is typically looking to a civil-court jury to award substantial general damages for pain and suffering. Personal injury cases are typically handled under contingency fee arrangements where the lawyer obtains a substantial percentage of the damages as the legal fee and the balance of the money for pain and suffering often goes to the surviving family members.

Nursing home cases often have only minimal special damages for extra medical expenses, etc., and there is usually no lost income or loss of lifetime earning capacity for an elderly person who is already retired and unable to work.

Defendants Prefer Arbitration

In arbitration, on the other hand, damages for pain and suffering can be and are awarded, but the potential for a large "jackpot" for the lawyer and family is far less than the exposure in a jury trial.

This case follows the emerging trend toward arbitration as a viable alternative to jury trial in nursing-home liability cases. **McGuffey Health and Rehabilitation Center v. Gibson, __ So. 2d __, 2003 WL 21040590 (Ala., May 9, 2003).**

The legal system generally favors civil cases being decided in arbitration rather than in court.

The Federal Arbitration Act relies on the constitutional supremacy of the Commerce Clause of the US Constitution.

State courts have no choice but to uphold arbitration clauses in contracts.

A court must order arbitration rather than a jury trial when a contract contains an arbitration clause, assuming the subject of the contract is within the realm of interstate commerce.

Nursing home admissions contracts that contain arbitration clauses are within the realm of interstate commerce.

Medicare and Medicaid funds typically cross state lines getting from Washington to a fiscal intermediary and to a nursing home in a particular state.

In addition, supplies such as medications, bed pads, cleaning fluids, etc., that are used in nursing homes cross state lines getting to a particular nursing home.

SUPREME COURT OF ALABAMA
May 9, 2003

Race Bias: Court Says Disciplinary Histories Not

The US Circuit Court of Appeals for the Eleventh Circuit dismissed an African-American nurse's race discrimination case filed against the hospital where she had worked as a charge nurse in surgical services.

To prove racial bias lay beneath an employer's disciplinary decision a minority employee has to identify one or more non-minority employees who were treated less harshly for the same misconduct.

The minority and non-minority employees have to have been similarly situated in all relevant respects and must have been accused of the same or similar misconduct but disciplined in different ways.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
May 14, 2003

The court agreed with the African-American nurse's approach to her case. She had to identify and focus on the work history of at least one non-minority nurse who was disciplined less harshly than she was for essentially the same conduct.

However, the court agreed with the hospital, on balance, that the Caucasian nurse's record of unproductive performance and inappropriate exchanges with co-workers was not as bad.

In addition, the court believed the Caucasian nurse's plan of corrective action showed motivation to keep her job, while the African-American nurse's was argumentative and proposed no solution. **Knight v. Baptist Hospital, __ F. 3d __, 2003 WL 21078179 (11th Cir., May 14, 2003).**