

# LEGAL EAGLE EYE NEWSLETTER

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## Nursing Home Negligence: Supreme Court Upholds Pre-Dispute Arbitration Agreements.

Several nursing-home negligence suits were consolidated for a ruling by the US Supreme Court on the question of the validity of an arbitration agreement signed at the time of the resident's admission, that is, before a negligence claim had arisen by the patient or patient's family against the facility.

The Supreme Court ruled that the US Federal Arbitration Act is the paramount legal authority in this area. Being a Federal statute, the Act trumps any state law, state statute or state court precedent which runs contrary.

The basic principle behind the Supreme Court's ruling is the supremacy of Federal laws passed by the US Congress under Congress's preemptive authority under the Interstate Commerce Clause of the US Constitution.

The Federal Arbitration Act sets out a strong Federal policy in favor of alternate dispute resolution of disputes in healthcare and elsewhere, assuming the parties have freely agreed to arbitration, the Supreme Court said.

The Act says in no uncertain terms that arbitration agreements are meant to be enforced. Any state law which negates or tries to qualify what the Act says is in conflict with the Act and that conflict must be resolved in favor of the Court holding the contrary state law or judicial ruling invalid.



***The lower courts misread Federal law and ignored US Supreme Court precedents when they ruled that arbitration clauses in nursing home admission documents are not enforceable if they are signed by the patient or patient's representative before the actual negligence claim has arisen between the patient or patient's family and the facility.***

UNITED STATES SUPREME COURT  
February 21, 2012

The case before the Supreme Court involved negligence suits by family members of three different nursing home residents who had signed virtually identical nursing home admission forms when entering the same facility.

The admission papers required the parties to arbitrate all disputes except collection actions for payment of nursing home fees, and to arbitrate under the arbitration rules of the American Arbitration Association.

Each of the cases was filed *post-mortem* by the family seeking damages for nursing home negligence allegedly responsible for the resident's death.

The lower courts in West Virginia, all the way up to the state's Supreme Court of Appeals, ruled that West Virginia courts have adopted a common law principle of public policy that arbitration agreements in nursing-home negligence cases are not valid and not enforceable if they are signed before the alleged error or omission occurs which gives rise to the patient's or family's claim for damages.

The US Supreme Court invalidated the state's common law public policy statement because it runs contrary to Federal law. Federal law controls in this situation. **Marmet Healthcare v. Brown**, 565 U.S. \_\_\_, 2012 WL 538286 (U.S., February 21, 2012).

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