



## Legal Alert: U.S. Supreme Court Decision on FAA Preemption Overrules West Virginia High Court

2/22/2012

**Executive Summary:** On February 21, 2012, the U.S. Supreme Court, in a Per Curiam opinion, reinforced the preemption of the Federal Arbitration Act (FAA) with respect to all arbitration agreements governed by the statute.

See *Marmet Health Care Center v. Brown et al.* (Feb. 21, 2012). The Court's decision in this non-employment case continues the line of Supreme Court decisions holding that the FAA preempts state laws that would undermine the enforceability of arbitration agreements.

In this decision, representatives of three patients had signed admission agreements for nursing home patients, which included a broad arbitration agreement for the resolution of disputes. After the patients' deaths, their representatives sued in state court asserting tort claims for negligence and wrongful death. The West Virginia Supreme Court of Appeals (the state's highest court) subsequently refused to enforce the arbitration agreement based on public policy and with some alternative suggestion of unconscionability under state contract law, holding:

[A]s 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 a personal injury or wrongful death, shall not be enforced to compel arbitration of a dispute concerning negligence.

The West Virginia court also considered whether the FAA preempted state public policy, but held that it did not. According to the West Virginia court, Congress did not intend the FAA to apply to personal injury or wrongful death arbitrations. Accordingly, the West Virginia court held that there was no preemption of the state public policy against enforcement of predispute arbitration agreements for personal injury and wrongful death.

The U. S. Supreme Court reversed, holding that the West Virginia court's interpretation of the FAA was both "incorrect and inconsistent with clear instruction in the precedents" provided by the Supreme Court. The Court said there is no exception in the FAA for personal injury or wrongful death claims that would exclude them from enforceable arbitration agreements.

Quoting from its 2011 decision in *AT&T v. Concepcion*, the Court said:

[W]hen 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 Court continued by citing a number of cases in which it applied the preemption standard, including: a limitation imposed by a state statute granting exclusive jurisdiction to a state commissioner; a state statute granting exclusive jurisdiction to courts to resolve punitive damages; a state law requirement that litigants use a judicial forum for wage disputes; and a state prohibition on arbitration of financial investment claims. In each case, the Court held that the FAA preempts state law requirements that would interfere with the federal policy favoring the arbitration of disputes by the parties.

The Court also noted the West Virginia court's alternative suggestion that the arbitration agreements were not enforceable because of unconscionability considerations. The Court remanded the case on this issue for reconsideration and clarification by the West Virginia court:

It is unclear, however, to what degree the state court's alternative holding was influenced by the invalid, categorical rules [against personal injury and wrongful death predispute arbitration agreements] discussed above...

The Supreme Court remanded the case and directed the West Virginia court to consider whether there are, in fact, any common law principles "that are not specific to arbitration and pre-empted by the FAA" that support the court's public policy assertion.

#### **Employers' Bottom Line**

The Supreme Court has strongly emphasized the principles of preemption where the FAA applies. However, agreements that are governed by state arbitration laws may be more susceptible to arguments that state law prevents the enforcement of such agreements.

If you have any questions regarding this decision or employment related arbitration issues, please contact the author of this Alert, John Allgood, [jallgood@fordharrison.com](mailto:jallgood@fordharrison.com) or the Ford & Harrison attorney with whom you usually work.