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## Supreme Court Rules Consumers Can't Sue Nursing Homes

POSTED APRIL 3, 2012 IN [LANDMARK COURT CASES](#) BY [AARON KASE](#) 0 COMMENTS

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Nursing homes are free to use [binding arbitration](#) agreements in their contracts with residents, barring victims and their families from suing the homes even in extreme cases of personal injury and wrongful death, the Supreme Court ruled in February.

- **Decision overturns West Virginia ruling that allowed malpractice lawsuits against homes**
- **Binding arbitration strips consumers of right to have their say in court**
- **Inspect nursing home contract before signing and demand that arbitration clauses be removed**



### Matter of Public Policy

The Supreme Court ruling overturned a [decision by the West Virginia Supreme Court](#) to allow lawsuits against nursing homes despite binding arbitration clauses. The ruling stemmed from three malpractice suits for [wrongful death](#) against West Virginia nursing homes, in which plaintiffs sought compensation even though they or their loved ones had signed an agreement to settle disputes in arbitration, not courts, as part of the stacks of paperwork necessary to admit a resident to a home.



Harry Bell

As it turns out, West Virginia has a Nursing Home Act that bans forced arbitration agreements as a "matter of public policy." The state justices drew a particular distinction for [personal injury](#) and wrongful death suits, writing, "Congress did not intend for the [Federal Arbitration Act of 1925 that allows companies to mandate arbitration] to be, in any way, applicable to personal injury or wrongful death suits... particularly where the agreement involves a service that is a practical necessity for members of the public."

"You're dealing with some of the most tragic circumstances involving human life," says [Harry Bell](#), one the the attorneys who brought the [malpractice](#) suits before the West Virginia Court.

However, the Supreme Court of the United States saw things differently, and [threw out the state court's ruling](#), thus dramatically limiting the rights of consumers who are injured in nursing homes to seek compensation.

### Life Changing Event

The Supreme Court's ruling affirms an [ongoing assault on consumer rights](#) through binding arbitration clauses, which eliminate the right to sue companies even for the most egregious offenses. The rulings are based on the 1925 [Federal Arbitration Act](#), which gives businesses almost unlimited rights to include arbitration clauses in contracts.

The terms of arbitration are generally picked by the business, and can be secretive, restrictive and expensive for consumers to pursue. Discovery can be limited. Information exchanged in the hearings is usually not made available to the public. Credit card companies and wireless carriers are especially notorious for mandating binding arbitration, but its use in nursing homes raises the stakes considerably since people's health and even lives are at stake.

"It's a life changing event," Bell says of entering a home, and the circumstances under which the

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agreements are signed don't necessarily invite reflection on the consequences of the arbitration agreements, or even awareness of them. "You have more time to contemplate and review paperwork when buying a car than you ever do when you're being admitted to a nursing home," he continues, noting that residents are often in pain and distress and coming directly from a hospital when they sign the nursing home contract. "If there was a disclaimer in bold black letters that said 'warning, if you sign this agreement, you will be giving up your constitutional rights in the Seventh Amendment, forced into a private and secretive arbitration process and not have the benefits of established law and the American judicial system to resolve and adjudicate this dispute,' who would sign under something like that?"

## Frustrated Consumers

The ruling has frustrated consumer advocates across the nation. "This decision is a definite set-back for consumers," says [David Miller](#), an attorney at Pennsylvania firm [Michael J O'Connor & Associates](#). "The Supreme Court ruling makes it clear that forced arbitration clauses cannot be deemed unenforceable on public policy grounds alone. What we are left with are basic contract law defenses, the most successful being lack of capacity to enter into a contract and [unconscionability](#)."

"We are going to see arbitration clauses become an increasingly common part of nursing home admission agreements as these are generally favorable for nursing homes," says [Jonathan Rosenfeld](#), an attorney in Illinois who maintains a [blog on nursing home abuse](#).

"Many nursing home arbitration clauses control all aspects of the arbitration in a manner that is completely stacked against the patient or family," Rosenfeld says. "As opposed to having an independent court hear a matter, arbitration agreements may stipulate the entity responsible for making such determinations and the specific rules (or lack thereof) for obtaining discovery material from the nursing home that would ordinarily be permitted in a traditional setting."



David Miller

## Don't Be Fooled

The good news is, you have the option to avoid arbitration clauses in nursing homes with a simple action—don't sign them. Unlike credit card companies and other firms that rely on arbitration clauses, nursing homes are less likely to simply refuse to modify their contract.



Jonathan Rosenfeld

"Specific to nursing home admissions, the public needs to know that they do not have to, and should not, sign an arbitration agreement during the admissions process," says Miller. "A facility cannot refuse a resident who refuses to sign an arbitration agreement. The decision to arbitrate a dispute should only be made after the dispute arises, and that is a universal truth that our Supreme Court does not seem to grasp."

Unfortunately, arbitration probably isn't foremost on people's minds when entering a home. Aside from individual diligence, the best and broadest way to fight back against a nine-decade old law that's being taken out of context is with a new law: The [Arbitration Fairness Act](#) is currently bouncing around in Congress, which would disallow preemptive binding arbitration contracts and ensure that consumers have the right to see their day in court.

Tagged as: [Arbitration Fairness Act](#), [Binding arbitration](#), [David Miller](#), [Federal Arbitration Act](#), [Harry Bell](#), [Jonathan Rosenfeld](#), [nursing home abuse](#), [Supreme Court](#), [West Virginia](#)

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