



U.S. Supreme Court Removes Barrier to Enforcement of Arbitration Agreements in Kentucky

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Kentucky has always had barriers to the enforcement of arbitration agreements. These barriers have persisted despite the Federal Arbitration Act and the strong national policy favoring the **arbitration** of disputes over **litigation**, which typically takes longer and costs more. On May 15, 2017, in *Kindred Nursing Centers LP v. Clark*, the U.S. Supreme Court removed one of these enforcement barriers – paving the way for greater use and enforcement of arbitration agreements in Kentucky.

In *Kindred Nursing Centers LP v. Clark*, two individuals granted broad powers to their respective family members to manage their personal affairs. With this power, the family members (or “powers of attorney”) signed all of the paperwork associated with admitting their loved ones to a nursing home operated by Kindred in Kentucky. One of the documents each of the family members/powers of attorney signed was an arbitration agreement requiring that all claims/disputes arising out of their family member’s stay at the nursing home would be resolved through binding arbitration.

After the two nursing home residents passed away, their family members/powers of attorney sued Kindred in court for “wrongful death” and requested jury trials. Kindred asked the trial court to dismiss the lawsuits based on the arbitration agreements signed by the powers of attorney during the nursing home admission process. The trial court refused to dismiss the lawsuits or enforce the arbitration agreements, and the Kentucky Court of Appeals affirmed that decision during the first level appeal. Kindred then appealed the two cases to the Kentucky Supreme Court.

The Kentucky Supreme Court determined that the arbitration agreements were invalid and unenforceable because the documentation establishing the powers of attorney did not **explicitly** state that the family members could enter into “

arbitration agreements.” Relying on the notion that the Kentucky Constitution singled out the right to a jury trial as “sacred” and “inviolable,” the Kentucky Supreme Court held that arbitration agreements must be executed by individuals with the **explicit** authority to enter into “**arbitration agreements.**” The Kentucky Supreme Court reasoned that this “clear statement rule” did not single out arbitration agreements for different treatment (which is forbidden by the Federal Arbitration Act), because the rule would be equally applicable to other agreements that implicated “fundamental constitutional rights,” like contracts involving “personal servitude” or “arranged marriages.”

The U.S. Supreme Court overturned the Kentucky Supreme Court’s decision and unequivocally rejected the “clear statement rule” in a 7-1 decision. The basis for the Court’s ruling was simple: the “clear statement rule” ignored the Federal Arbitration Act’s command to place arbitration agreements on an “equal footing with all other contracts” and prevented the enforcement of an otherwise valid arbitration agreement. The *Kindred Nursing Centers LP* decision makes clear that the U.S. Supreme Court will not tolerate hostility – whether explicit or “covert” – to arbitration agreements from state courts and reinforces the Federal Arbitration Act’s policy favoring arbitration over litigation where the parties have voluntarily entered into an arbitration agreement. The implication of this decision is that arbitration is a viable method to resolve disputes in Kentucky.

For more information about the *Kindred Nursing Centers LP v. Clark* decision or the use or enforcement of arbitration agreements in Kentucky, please contact [Katie Wright](#), [Charlie Bradley](#), or any other member of Frost Brown Todd’s [Labor and Employment](#) practice group.

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