

Press Release

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FOR IMMEDIATE RELEASE

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COURT URGED TO ENFORCE AGREEMENTS TO ARBITRATE COMMERCIAL DISPUTES

(PacifiCare Health Systems, Inc. v. Book, No. 02-215)

The Washington Legal Foundation (WLF) this week urged the U.S. Supreme Court to enforce agreements to arbitrate commercial disputes, regardless of whether the remedies available in an arbitration proceeding are less broad than those available in a lawsuit.

In a brief filed in *PacifiCare Health Systems, Inc. v. Book*, WLF argued that arbitration in most instances is faster and more efficient than litigation and that there is no reason not to hold commercial parties to an agreement to arbitrate any disputes that may arise in the course of their business relationships. WLF argued that a party may not avoid arbitration simply because a remedy it desires -- a punitive damages award -- may not be available in arbitration. WLF filed its brief with the pro bono assistance of Christopher Landau, Craig S. Primis, and Ashley C. Parrish of the law firm of Kirkland & Ellis.

"When two sophisticated private parties enter into an agreement to arbitrate their disputes, the courts have no basis for refusing to enforce that agreement," said WLF Chief Counsel Richard Samp after filing WLF's brief. "It is entirely rational for business people to agree to settle their disputes outside of the courtroom," Samp said.

The case involves a dispute between a group of doctors and several managed care organizations for whom they provided services. The doctors were providing services pursuant to agreements under which the parties agreed to submit any disputes to arbitration. The agreements also stated that the arbitrators would have no authority to award punitive damages.

In 2000, the doctors filed a lawsuit in federal court, claiming that the managed care organizations' conduct violated, *inter alia*, the Racketeer Influenced and Corrupt Organizations Act (RICO), a federal law that permits the award of punitive damages (in an amount equal to twice the out-of-pocket damages suffered by the plaintiff). A federal district court refused to dismiss the doctors' RICO claims, holding that the arbitration agreement should not be enforced

because it precluded the doctors from obtaining "meaningful relief" in arbitration. The U.S. Court of Appeals for the Eleventh Circuit in Atlanta affirmed; the Supreme Court has agreed to review the appeals court's decision.

In its brief, WLF argued that, in the absence of evidence that one party to the arbitration agreement was an unsophisticated consumer who did not realize he was signing away his right to sue in court, arbitration agreements should be enforced. WLF argued that if there is any dispute regarding whether the parties in their arbitration agreement really agreed to preclude the award of punitive damages, that issue should be decided by the arbitrator, not the courts.

WLF further argued that enforcing arbitration agreements in cases of this sort will help keep health care costs under control. WLF argued that arbitration agreements between physicians and managed care organizations are a vital tool for controlling ever-burgeoning costs. "By forgoing punitive damages in arbitration, physicians and managed care organizations mutually agree to disarm themselves of the most threatening legal weaponry. Both parties to the contract benefit, as does the general public. Disputes are quickly and efficiently resolved, destructive high-stakes litigation is avoided, and health care costs are kept in check," WLF's Samp said.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to bringing about civil justice reform and to finding alternatives to lengthy and costly courtroom battles as a means of resolving disputes.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief has been posted on its web site, www.wlf.org.