IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

SHERRI CORUM, AS PERSONAL REPRESENTATIVE OF THE WRONGFUL DEATH BENEFICIARIES OF MARY JO HEBERT, DECEASED,

Plaintiff/Appellee,

vs.

Ct. App. No. 28,314
Dist. Ct. No. D101 CV-2007-01307

ROSWELL SENIOR LIVING, LLC, D/B/A ROSWELL SENIOR LIVING COMMUNITY A/K/A LA VILLA, SUNWEST MANAGEMENT, INC., et al.,

Defendants/Appellants.

On Appeal from the First Judicial District Court
Santa Fe County, New Mexico
The Honorable James Hall, Presiding

APPELLANTS' BRIEF-IN-CHIEF

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I. INTRODUCTION

Roswell Senior Living, LLC, d/b/a Roswell Senior Living Community a/k/a La Villa, Sunwest Management, Inc., Jon M. Harder, Darryl E. Fisher, Divine Investments, LLC, The Fisher Joint Revocable Trust, and Diedra J. Duvall, Administrator (hereinafter collectively referred to as "La Villa") respectfully submit this brief-in-chief seeking reversal of the district court's denial of La Villa's motion to compel arbitration. The district court erred as a matter of law in declining to enforce the arbitration agreement executed on behalf of Mary Jo Hebert by her husband in connection with Mrs. Hebert's admission to the La Villa assisted living facility.

II. SUMMARY OF PROCEEDINGS

A. Nature Of The Case.

La Villa appeals from the district court's denial of a motion to compel arbitration.

B. Course Of Proceedings.

On June 4, 2007, Plaintiff/Appellee ("Corum") filed her Complaint for Wrongful Death, Negligence, Negligence Per Se, Misrepresentation, Violation of the Unfair Trade Practices Act and Punitive Damages. Corum alleged damages and injuries to Mary Jo Hebert during her residency at the La Villa assisted living facility (the "Facility"). (R.P. at 7). On August 16, 2007, La Villa filed a motion

to compel arbitration asserting that all claims brought by Corum were subject to an arbitration agreement executed by Edward Hebert on or about March 15, 2006. (R.P. at 172-180). Corum responded, asserting that Edward Hebert did not have authority to execute the arbitration agreement on behalf of Mary Jo Hebert, his wife, or her wrongful death beneficiaries. (R.P. at 207-210). Corum also asserted that the arbitration agreement was substantively and procedurally unconscionable. (R.P. at 210-214).

The district court held a hearing on the motion to compel arbitration on November 1, 2007. After the hearing, the district court denied the motion, concluding there was not a valid agreement to arbitrate because Mr. Hebert lacked authority to enter into an arbitration agreement. (R.P. at 245-248). The district court did not consider or decide Corum's claims that the wrongful death beneficiaries could not be bound by the agreement or whether the arbitration agreement was unconscionable. Id. La Villa appeals the Order denying the motion to compel arbitration.

C. Summary Of Facts Relevant To Issues On Appeal.

The parties do not dispute that Mrs. Hebert did not have the capacity to make medical decisions on or about March 15, 2006. (R.P. at 7). Further, the parties do not dispute that Edward Hebert was authorized as Mrs. Hebert's health care surrogate under the New Mexico Uniform Health Care Decisions Act

("NMUHCDA"), NMSA 1978, §24-7A-5 (1997), to obtain medical treatment for his wife. (R.P. at 209). Corum, Mrs. Hebert's daughter, had a valid power of attorney on March 15, 2006, to make health care decisions on behalf of Mrs. Hebert. (R.P. at 216-219). Corum does not dispute, however, that she was not "reasonably available" to make decisions regarding Mrs. Hebert's admission to La Villa on March 15, 2006, and that Mr. Hebert accordingly had such authority under NMSA 1978, §24-7A-5(B) (1997). (R.P. at 205-215). Corum contends that, while Mr. Hebert did have authority to select La Villa as Mrs. Hebert's health care provider, that authority did not extend to accepting the arbitration provision contained within the admissions agreement to the Facility on behalf of Mrs. Hebert. (R.P. at 209). Mrs. Hebert remained at the Facility until her death on or about June 5, 2006. (R.P. at 2).

The Roswell Senior Living Community Assisted Living Admission Agreement executed by Mr. Hebert on March 15, 2006, (the "Admission Agreement") contained on pages 11 and 12 a mutual agreement to arbitrate claims (the "Arbitration Agreement"). (R.P. at 193-194). The agreement to arbitrate was not a separate agreement, it was a provision of the Admission Agreement. Id. The Admission Agreement also identified the "Accommodations and Services" that the Facility was to provide to Mrs. Hebert. (R.P. at 187-188). In addition, the Admission Agreement set out specific rates, fees, and charges (R.P. at 184-185);

imposed certain restrictions on the use of the apartment (R.P. at 188); provided that tobacco products would not be used at La Villa (R.P. at 198); and stated that pets would not reside at the Facility. (R.P. at 199). The parties have agreed that the Arbitration Agreement is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §2. (R.P. at 193, 206).

D. Challenged Findings And Conclusions

The district court made the following finding: "there's not a valid contract to arbitrate in these circumstances. I do not believe Mr. Hebert had the power to either – to enter into an agreement to arbitrate. This really comes down to an evaluation of the statutory scope of the healthcare decision act, specifically, the decision by surrogate clause." (R.P. at 253-254).

La Villa challenges this legal finding.

III. ARGUMENT

The New Mexico Uniform Health Care Decisions Act Authorized Mr. Hebert To Execute The Arbitration Agreement In The Admission Agreement Between Mrs. Hebert And La Villa.

Statement of Preservation: La Villa preserved this issue by filing a motion to compel arbitration. (R.P. at 172-180).

Standard of Review: Appellate courts review de novo a district court's denial of an arbitration demand. Piano v. Premier Distrib. Co., 2005-NMCA-18, ¶4, 137 N.M. 57, 59. Similarly, whether the parties have agreed to arbitrate

presents a question of law, and this court reviews the applicability and construction of a contractual provision requiring arbitration de novo. Santa Fe Techs., Inc. v. Argus Networks, Inc., 2002-NMCA-30, ¶51, 131 N.M. 772, 788. Questions of statutory construction present purely legal issues to be reviewed de novo. Cerrillos Gravel Prods., Inc. v. Bd. of County Comm'rs, 2004-NMCA-096, ¶4, 136 N.M. 247, 249.

At issue in this case is whether Mr. Hebert lacked the authority to act on Mrs. Hebert's behalf in executing an assisted living facility admission agreement which included an arbitration provision. Corum has contended, and the trial court found, that even though Mr. Hebert had the undisputed authority to decide to admit Mrs. Hebert to the Facility, a portion of the Admission Agreement he signed pursuant to that authority, the Arbitration Agreement, should be deemed unenforceable because Mr. Hebert's authority was limited to "health care decisions." The district court's decision implicates the "surrogacy authority" granted by the NMUHCDA. The relevant statutory language reads as follows:

> A. A surrogate may make a health-care decision for a patient who is an adult or emancipated minor if the patient has been determined according to the provisions of Section 24-7A-11 NMSA 1978 to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available.
> B. An adult or emancipated minor, while having capacity, may designate any individual to act as surrogate by personally informing the supervising health-care provider. In the absence of a designation or if the designee is not reasonably available, any member of the

following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:
(1) the spouse, unless legally separated or unless there is a pending petition for annulment, divorce, dissolution of marriage or legal separation;
...
H. A health-care decision made by a surrogate for a patient is effective without judicial approval.

NMSA 1978, §24-7A-5(1997).

The NMUHCDA defines a "health care decision" as "a decision made by an individual or the individual's agent, guardian or surrogate, regarding the individual's health care, including...selection and discharge of health-care providers and institutions." NMSA 1978, §24-7A-1(G) and (G)(1) (1997) (emphasis added). The language and intent of this provision, other features of the NMUHCDA, and relevant authorities from other jurisdictions compel reversal of the district court's ruling. Additionally, the district court's analysis conflicts with the FAA.

A. The District Court's Refusal To Enforce Arbitration Conflicts With The Language And Intent Of The New Mexico Uniform Health Care Decisions Act.

Fundamentally, the issue presented by this appeal concerns a question of statutory construction. In determining the extent of a surrogate's authority conferred by the NMUHCDA, as in any case of statutory construction, the court's objective is to give effect to the legislative purpose as revealed by the language of the statute. "Statutes are to be read in a way that facilitates their operation and the

achievement of their goals." Castillo v. County of Santa Fe, 107 N.M. 204, 206-07, 755 P.2d 48, 50-51 (1988) (internal quotation marks & citation omitted). "To determine legislative intent we look first to the plain language of the statute . . . . We also may look to the history and background of the statute to determine the meaning of the language. . . . We examine the act in its entirety, construing each section in connection with every other section." Draper v. Mountain States Mut. Cas. Co., 116 N.M. 775, 777, 867 P.2d 1157, 1159 (1994). "We do not construe a statute . . . in a manner that would lead to absurd or unreasonable results." State v. Romero, 2002-NMCA-106, ¶ 8, 132 N.M. 745, 747.

The only reasonable construction of the NMUHCDA, considering its language, history, and purpose, would confer authority on a surrogate to execute an admission agreement to a health care facility regardless of whether the agreement contains an arbitration clause. An authorized health care decision under the Act is simply a decision "regarding [an] individual's health care." NMSA 1978, § 24-7A-1(G) (1997). The decision whether to sign an agreement by which an individual is to be admitted to an assisted living facility is a decision regarding the individual's health care. See Webster's Third New Int'l Dictionary (1971), at 1911 ("regarding" means "with respect to" or "concerning"). There is no indication that the legislature, in following this general grant of authority with a list of specific instances, intended to limit it. To the contrary, when the legislature intended to

limit a surrogate's authority under the Act it did so expressly. See NMSA 1978, § 24-7A-13(E) (1997) (UHCDA "does not authorize an agent or surrogate to consent to the admission of an individual to a mental health-care facility").

Moreover, one of the actions specifically authorized as a health care decision under the NMUHCDA is "selection . . . of health-care providers and institutions." Id. § 24-7A-1(G)(1). It makes little sense to empower a surrogate to "select" a health care institution for an individual if the surrogate then lacks the power to make the contractual arrangements necessary to admit the individual to the selected institution. It is a familiar concept in law that a legislative grant of authority includes "all powers that may fairly be implied therefrom," Winston v. New Mexico State Police Bd., 80 N.M. 310, 311, 454 P.2d 967, 968 (1969), or the "authority to use the usual means of carrying the power conferred into effect," City of Albuquerque v. Water Supply Co., 24 N.M. 368, 405, 174 P.217, 229 (1918) (internal quotation marks and citation omitted.) "This concept was a part of the law . . . when our legislature enacted the [relevant law]. The legislature is presumed to know the law in existence." McCurry v. City of Farmington, 97 N.M. 728, 732, 643 P.2d 292, 296 (Ct. App. 1982). Besides, as previously noted, the legislature was capable of expressly limiting a surrogate's authority, see NMSA 1978, § 24-7A-13(E) (1997), and chose not to do so in this area. Cf. Patterson v. Globe Am. Cas. Co., 101 N.M. 541, 543, 685 P.2d 396, 398 (Ct. App. 1984)

(inferring from fact that legislature knew how to achieve particular result, and did not do so, that legislature did not intend to do so).

The NMUHCDA confers broad authority on a surrogate, including the authority not only to make medical care decisions but to decide for the individual whether to approve a do-not-resuscitate order, to withhold or withdraw life-sustaining treatment, artificial nutrition, and hydration, or to terminate life support measures. NMSA 1978, § 24-7A-1(G)(2)-(4) (1997). It makes little sense to conclude that a statute which authorizes a surrogate to make life and death decisions for an individual does not permit the surrogate to execute a health care contract for the individual that contains an arbitration clause. The greater power surely includes the lesser. Cf. State ex rel. Harvey v. Medler, 19 N.M. 252, 260-61, 142 P. 376, 378-79 (1914) (legislature's power to remove public officials encompassed lesser power to suspend them).

Further indicative of the legislature's intent with respect to the authority of a surrogate is its express directive in the NMUHCDA that a surrogate's health care decision is effective "to the same extent as if the decision had been made by the patient while having capacity." NMSA 1978, § 24-7A-7(D)(3) (1997). The obvious legislative goal underlying the NMUHCDA is to establish a process through which a surrogate can make all the decisions the patient would have made, if capable, regarding the patient's health care needs and choices. This legislative

objective would be frustrated if a court were permitted to parse a document like the Admission Agreement and decide that, while a surrogate can agree that the patient will pay for her care and will not smoke tobacco or keep a pet in the facility (see R.P. at 184, 196, 198, 199), the surrogate cannot in the same document agree to arbitrate disputes. See Protection & Advocacy Sys., Inc. v. Presbyterian Healthcare Servs., 1999-NMCA-122, ¶ 16, 128 N.M. 73 (focus of NMUHCDA is "primarily on the procedures for decision making rather than the content of decisions"). If the arbitration provision in the Admission Agreement would be given effect if it had been signed by the decedent herself while she was competent, then it should be given effect under the NMUHCDA if signed by her surrogate, as it was in this case.

Reversal would achieve the result most likely to accord with Mary Jo Hebert's own directions. This, of course, also is the aim of the NMUHCDA. See NMSA 1978, § 24-7A-5(F) (directing surrogate to make health care decision "in accordance with the patient's individual instructions, if any, and other wishes to the extent known to the surrogate" or, "[o]therwise, . . . in accordance with the surrogate's determination of the patient's best interest," considering "the patient's personal values to the extent known to the surrogate"). In the medical portion of the durable power of attorney she executed, Mary Jo Hebert authorized her attorney-in-fact to "do and perform all things necessary and related to my medical

treatment," including "[t]o arrange for my hospitalization, convalescent care, rest home care, nursing home care, or home care." (R.P. at 218). The power of attorney thus reflects Ms. Hebert's own desire that a person authorized to act in her stead on health care matters should have broad authority to perform "all things necessary" to arrange for her care in a facility like La Villa. Her husband and surrogate did exactly that, and his acts should be recognized as valid and binding under the NMUHCDA.

Finally, New Mexico has a strong public policy favoring arbitration. See, e.g., Spaw-Glass Constr. Servs., Inc. v. Vista De Santa Fe, Inc., 114 N.M. 557, 558, 844 P.2d 807, 808 (1992) (noting that arbitration is a form of dispute resolution highly favored in New Mexico). Arbitration enjoys a highly favored status because it promotes judicial efficiency and conservation of resources by all parties. Santa Fe Techs., 2002-NMCA-030 at ¶ 51. It allows for informal, speedy, and inexpensive final disposition of disputes. Fernandez v. Farmers Inc. Co. of Ariz., 115 N.M. 622, 625, 857 P.2d 22, 25 (1993). Our legislature aimed to relieve the burden on the judiciary by encouraging arbitration. Id. The legislature's treatment of arbitration as favored further supports the construction of the NMUHCDA the district court incorrectly rejected.

B. The History Of The NMUHCDA And Persuasive Analysis From Other Courts Demonstrate That Surrogacy Authority Encompasses The Right To Execute Arbitration Agreements In Connection With An Admission To A Health-Care Institution.

The history of the NMUHCDA also points toward an expansive interpretation of a surrogate's power. The statute is a uniform act drafted in 1993 and adopted in New Mexico two years later. See Protection & Advocacy, 1999-NMCA-122 at ¶ 6; Uniform Health-Care Decisions Act, 9 Uniform Laws Annotated, Part IB, at 83, 86 (2005).

In 1990, the United States Supreme Court held that a state could require "clear and convincing evidence" that an incapacitated individual would want life support removed before allowing family members to make any decision to end such life support on behalf of the incapacitated individual. Cruzan v. Missouri Dep't of Health, 497 U.S. 261, 284-85 (1990.) In Cruzan, the parents of a woman in a persistent vegetative state were unable to terminate life support for their daughter in the absence of "clear and convincing evidence" that their daughter would have wanted the life support removed. Id. at 265-66.

In 1993, the National Conference of Commissioners on Uniform State Laws ("Committee") noted that, since the Cruzan decision, a "significant change [had] occurred in state legislation on health-care decision making." See 9 Uniform Laws Annotated, Part IB, p. 84. The Committee also noted that the state legislation had

"developed in fits and starts, resulting in an often fragmented, incomplete, and sometimes inconsistent set of rules." Id.

In light of this confusion, the Committee drafted the Uniform Health Care Decisions Act around key concepts, including the premise that "an agent has authority to make all health-care decisions which the individual could have made." Id. Another key concept of the UHCDA was that health-care decisions should be made "by a designated surrogate, family member, or close friend when an individual is unable to act and no guardian or agent has been appointed or is reasonably available." Id.

The drafters' comments to the uniform act reflect an intent that the term "health care" as used therein "be given the broadest possible construction." Id. at 90. Consistent with this intent, this court previously has recognized that the NMUHCDA "applies to all health-care decisions, broadly defined." Protection & Advocacy Sys. Inc., 1999-NMCA-122 at ¶ 15.

Accordingly, other courts addressing surrogate authority under the UHCDA have found that it encompasses the right to execute arbitration agreements in connection with an admission to a health-care institution. Mississippi's state courts, for example, have held that identical statutory language granting surrogate authority encompassed the power to execute an arbitration agreement in connection with an admission to a nursing home. Covenant Health Rehab of

Picayune, L.P. v. Brown, 949 So.2d 732, 736 (Miss. 2007); Magnolia Healthcare, Inc. v. Barnes, 2008 WL 95814, *4 (Miss. 2008); Covenant Health & Rehab. of Picayune, LP v. Lumpkin, 2008 WL 306008 (Miss.App. 2008). Similarly, a Texas court of appeals has also held that statutory surrogate authority encompassed the ability to execute arbitration agreements in connection with an admission to a nursing home. In re Ledet, 2004 Tex.App. LEXIS 11474, *12. While Corum likens the facts in this case to those in Raiteri v. NHC Healthcare, 2003 WL 23094413 (Tenn. Ct. App.), the Raiteri case did not consider statutory surrogacy, and the resident to be admitted to the nursing home was herself competent.

In considering the NMUHCDA, the court may consider "a judicial construction of the same or similar statute or rule of this or another state." NMSA 1978, §12-2A-20(B)(1) (1997). The analysis of the state courts of Texas and Mississippi, as set forth above, provides helpful guidance toward the conclusion that the ability to make the "selection of a healthcare institution" encompasses the ability to execute required arbitration agreements. Moreover, the statutory language should be read in a way that is consistent with the objective and purpose of the NMUHCDA and gives meaning to the statutory authority granted by the New Mexico legislature. NMSA 1978, 12-2A-18(1) (1997).

C. The Pagarigan Opinion is Distinguishable.

The district court and Corum relied on Pagarigan v. Libby Health Care Ctr., Inc., 99 Cal.App.4th 298 (2002), which held that certain statutory authority did not encompass the ability to execute arbitration agreements. The Pagarigan opinion, however, does not support the outcome challenged in this appeal.

In Pagarigan, three adult children of a deceased nursing home facility patient brought suit against the facility. Id. at 299. The nursing home sought to compel arbitration based on two arbitration agreements signed by two of the children approximately one week after their mother was admitted. Id. at 300.

The statutory surrogacy authority in the UHCDA and NMUHCDA, or as contemplated by the Mississippi and Texas courts, was not at issue in Pagarigan. Indeed, Pagarigan does not even mention surrogacy authority. Rather, the court in Pagarigan considered whether significantly different statutory language which allowed "next of kin" to make medical treatment decisions if a "physician and surgeon of a resident in a skilled nursing facility or intermediate care facility prescribes or orders a medical intervention that requires that informed consent be obtained..." would encompass the ability to execute arbitration agreements. 99 Cal.App.4th at 302 citing to Cal. Health & Saf. Code §1418.8 (2007). The Pagarigan court concluded that the very limited statutory authority at issue---responding to a prescription or order that requires informed consent---did not

translate into the ability to sign arbitration agreements at the request of the nursing home. Id.

In contrast to the statute at issue in Pagarigan, the surrogate authority granted by the statute at issue in this case is not limited to those circumstances in which a physician prescribes or orders a medical intervention. Rather, the NMUHCDA surrogate authority encompasses the ability to make any health-care decision if the individual has been determined to be incapacitated and an agent or guardian has either not been appointed or is not reasonably available. NMSA 1978, §24-7A-5(A) (1997). Also, unlike Cal. Health & Saf. Code §1418.8, the surrogate authority granted by the NMUHCDA is not dependent upon who requests the medical treatment at issue. NMSA 1978, §24-7A-5(A) (1997). Pagarigan did not decide whether a broad statutory authorization to make all health-care decisions, like the statute relevant here, would encompass arbitration agreements and is, therefore, neither persuasive nor relevant to the court's determination of the issue.

In fact, although California has adopted portions of the UHCDA, critical changes have been made to California's version of the UHCDA, making it inapplicable to the issue before this court. For instance, in adopting surrogate authority, California has eliminated the very language at issue in this case, 1978 NMSA §24-7A-5(A), and instead only allows surrogate authority when the

surrogate is designated by the patient. See Cal. Prob. Code §4711(a) (2007)("A patient may designate an adult as a surrogate to make health care decisions by personally informing the supervising health care provider..."). With some changes to require the individual to have capacity at the time of the designation, this language appears in the NMUHCDA at NMSA 1978, §24-7A-5(B) (1997). Subsection B is not relevant to this appeal because there is no issue before this Court as to whether Mrs. Hebert designated Mr. Hebert to act as her surrogate as it is undisputed that she did not have the capacity to do so at the relevant time.

In another case, the California court of appeals concluded that a power of attorney could properly execute an arbitration agreement in connection with an admission to a nursing home. Hogan v. Country Villa Health Services, 148 Cal.App.4th 259, 267 (2007). The power of attorney in Hogan granted authority to make "health care decisions," including the right to "select and discharge health care providers and institutions..." Id. at 263. This language is, of course, identical to the statutory language of NMSA 1978, §24-7A-5(A) (1997). The only difference between the Hogan court's analysis of this language and the issue before this court is that the Hogan court was deciding the issue under a contractual, rather than a statutory, grant of authority. The Hogan court noted that the execution of arbitration agreements in connection with an admission to a nursing home was

"part of the healthcare decision-making process." Id. at 267, citing to Garrison v. Superior Court, 132 Cal.App.4th 253, 266 (2005).

D. The District Court's Analysis Conflicts With The Federal Arbitration Act.

Finally, any analysis of the statutory authority granted to a surrogate pursuant to NMUHCDA cannot be solely limited to the question of whether it encompasses the ability to enter into a contractual agreement to arbitrate. Because this matter is governed by the FAA, the Arbitration Agreement may only be invalidated on grounds that would apply to any contract. See 9 U.S.C. § 2; see also Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985).

In deciding this issue, the district court noted that "while our case law, like all states' case law, includes a strong belief in enforcing agreements to arbitrate, I think it's a completely different matter when we're talking about waiving the right to trial or the jury trial and to include that within the scope of the act, it seems to me, overly broad." (R.P. at 253). The district court's reasoning implies that a contractual agreement to arbitrate is entitled to more careful scrutiny under the NMUHCDA. The FAA does not allow, however, for special scrutiny to be applied to arbitration agreements. See, e.g., Rainbow Healthcare Center, Inc. v. Crutcher, 2008 U.S. Dist.Lexis. 6705, *24 (N.D.Ok. 2008)(holding that Oklahoma statute which prohibited arbitration agreements in connection with admission to nursing home was preempted by the FAA). This court must consider all provisions of the

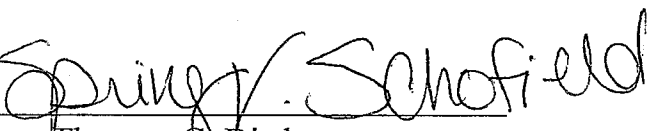
Admissions Agreement on equal footing. See 9 U.S.C. § 2. A surrogate must, therefore, have authority to execute all reasonably related provisions for an admissions agreement—including an arbitration agreement—or be found not to have authority to execute any agreement beyond the most basic provision of medical services. If a surrogate does not have authority to agree to necessary payment arrangements, universal restrictions on access or use of a facility, or to refrain from prohibited behaviors, it is difficult to imagine what health-care institution would be willing to accept a resident under such circumstances. Allowing a surrogate authority to execute other provisions related to the admission to a health-care institution, but not an arbitration provision, invalidates the arbitration provision on a ground that is not applicable to the other agreements and, therefore, conflicts with the FAA.

IV. CONCLUSION

The district court's refusal to enforce arbitration rested on a mistaken interpretation of the NMUHCDA and conflicts with the FAA. The court should reverse the order entered by the district court and remand with directions to order arbitration.

Respectfully submitted,

KELEHER & McLEOD, P.A.

By 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of Appellants' Brief-in-Chief was mailed on July 10, 2008, to the following individual:

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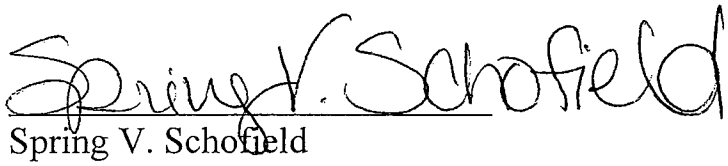

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