



## Arbitration Case Law Update

by Donna Greenspan Solomon

The following are recent cases of interest regarding arbitration issues:

*Am. Mgmt.*

*Services, Inc. v.*

*Merced*, 186 So. 3d 612 (Fla. 4th DCA 2016). Where question of fact exists as to making of arbitration agreement, it is error to deny motion to compel arbitration pending further discovery without setting motion for expedited hearing.

*A.K. v. Orlando Health, Inc.*,

186 So. 3d 626 (Fla. 5th DCA 2016). Arbitration agreement failing to adopt the necessary statutory provisions of the Medical Malpractice Act violates public policy. Conflict certified with *Santiago v. Baker*, 135 So.3d 569 (Fla. 2d DCA 2014).

*Reyes v. Claria Life & Health Ins.*

*Co.*, 190 So. 3d 154 (Fla. 3d DCA 2016). Once court determined that another state had exclusive jurisdiction, it should have dismissed action, not compelled arbitration.

*Wells v. Halmac Dev., Inc.*, 189

So. 3d 1015 (Fla. 3d DCA 2016). Property owners entitled to attorney's fees as sanctions in defending arbitrator's determination that there was no prevailing party in resolution of contract lien dispute where contractor's president presented no colorable claim in challenging determination.

*McKenzie Check Advance of*

*Florida, LLC v. Betts*, 191 So. 3d 530 (Fla. 4th DCA 2016) ("McKenzie III"). The Florida Supreme Court, in *McKenzie Check Advance of Fla., LLC v. Betts*, 112 So.3d 1176 (Fla. 2013) ("McKenzie II"), did not merely hold that the FAA preempts invalidation of a class action waiver on public policy grounds. McKenzie II also held that the arbitration provision expressly prohibited class arbitration, thereby precluding plaintiffs from re-litigating that issue before the arbitrator.

*Sovereign Healthcare of Tampa,*

*LLC v. Estate of Schmitt ex rel. Schmitt*, 195 So. 3d 1175 (Fla. 2d DCA 2016). Personal representative of nursing

home resident's estate not bound by arbitration agreement where resident did not sign nursing home agreement and wife was not authorized to sign on his behalf.

*Klemish v. Villacastin*, 41 Fla.

L. Weekly D1635 (Fla. 5th DCA 2016). Arbitration agreement between patient and hospital that incorporated only some provisions of the Medical Malpractice Act was unenforceable as against public policy.

*Meridian Pain & Diagnostics,*

*Inc. v. Greber*, 197 So. 3d 153 (Fla. 3d DCA 2016). Anesthesiologist's express insistence on arbitrating patient's claims necessarily waived and obviated the otherwise applicable presuit notice and investigation requirements.

*All S. Subcontractors, Inc. v.*

*Amerigas Propane, Inc.*, 41 Fla. L. Weekly D1859 (Fla. 1st DCA 2016). Propane seller could not compel arbitration where commercial customer did not assent to arbitrate claims occurring two years before document containing arbitration clause was mailed to customer as part of bulk mailing.

*Balaguer v. Physicians for the*

*Hand, LLC*, 199 So. 3d 375 (Fla. 3d DCA 2016). Record insufficient for appellate review of doctor's claim that arbitrator exceeded authority and denied doctor due process where doctor failed to provide transcript of arbitration hearing, and arbitrator's award and order denying reconsideration, and trial court's judgment confirming award, provided no basis to conclude that the issues were actually raised and preserved.

*Autonation, Inc. v. Susi*, 199

So. 3d 456 (Fla. 4th DCA 2016). The reasonable duration of a car dealership's arbitration agreement is the duration of the parties' relationship over the car at issue.

*Olson v. Florida Living Options,*

*Inc.*, 41 Fla. L. Weekly D2111 (Fla. 2d DCA Sept. 9, 2016). Negligence and breach of duty claims against skilled nursing facility (SNF) did not fall within scope of arbitration agreement

contained in lease between resident and assisted living facility (ALF), although SNF and ALF were located in same retirement community, they had same administrator, and same company was sole member of both SNF and ALF, where SNF and ALF were separate facilities with separate admissions procedures, arbitration agreement named ALF as facility to which agreement applied, and separate contract, which neither contained nor referenced arbitration agreement, was entered into when resident was admitted to SNF.

*Cirrus Holdings USA, LLC v.*

*Welch*, 199 So. 3d 558 (Fla. 4th DCA 2016). Trial court was required to determine whether there was an enforceable agreement to arbitrate between former employee and employer, and if so, to stay employee's lawsuit against employer and order the parties to arbitrate, even though employer used a motion to dismiss to argue that employee failed to comply with the contractual arbitration clause instead of filing a motion to compel arbitration.

*Mendez v. Hampton Court Nursing*

*Ctr., LLC*, 41 Fla. L. Weekly S394 (Fla. Sept. 22, 2016). Third party beneficiary doctrine did not bind nursing home resident to arbitration clause in admission agreement signed by his son; abrogating *Alterra Healthcare Corp. v. Estate of Linton ex rel. Graham*, 953 So.2d 574 (Fla. 1st DCA 2007).

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