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The Supreme Court of Illinois Holds That the Illinois Nursing Home Care Act Does Not Invalidate Arbitration Agreements

In *Carter v. SSC Odin Operating Company, LLC*, __ N.E.2d __, 237 Ill.2d 30, 2010 WL 1493626 (Ill. 2010), Lashly & Baer attorneys [W. Jeffrey Muskopf](#) and [Mark R. Feldhaus](#) won a significant victory for their client before the Supreme Court of Illinois that will help individuals and businesses enforce pre-dispute arbitration agreements throughout Illinois. The plaintiff alleged that the defendant nursing home failed to provide proper care to one of its residents. Both the resident and her daughter executed written agreements with the nursing home to resolve any such claims by arbitration as opposed to the court system. In response to the defendant's motion to compel arbitration, the plaintiff argued that the arbitration agreement was invalid under the Illinois Nursing Home Care Act, which contained provisions that purported to make null and void any waiver of a jury trial by a nursing home resident or his legal representative. The defendant argued that the Federal Arbitration Act ("FAA") preempted the Illinois Nursing Home Care Act's anti-waiver provisions, and thus the arbitration agreement was enforceable. The trial court denied defendant's motion to compel arbitration, and this decision was upheld by the appellate court.

After the Supreme Court of Illinois granted defendant's petition for leave to appeal, the State of Illinois intervened, likewise urging the Court to affirm the appellate court's decision and uphold the validity of the anti-waiver provisions of the Illinois Nursing Home Care Act. However, the Supreme Court agreed with the defendant and reversed the lower courts' rulings, struck down these anti-waiver provisions, and held that the anti-waiver provisions were preempted by the FAA. The Court reasoned that because the anti-waiver provisions of the Nursing Home Care Act would invalidate arbitration agreements in a specific type of contract – those involving nursing care – the public policy behind the anti-waiver provisions did not apply to all contracts generally, and thus they were impermissibly the functional equivalent of anti-arbitration legislation which is preempted by the FAA. The Court then remanded the action back to the appellate court to consider issues it did not previously address.

The significance of this decision extends beyond the parties to this case. This decision impacts nursing home operators in Illinois, who may still maintain the right to make pre-dispute arbitration agreements with their residents and legal representatives. Moreover, the decision is generally applicable to all businesses and individuals who desire to enter into pre-dispute arbitration agreements with other parties in order to save the time and expense of protracted litigation.

For more information, please contact your Lashly & Baer attorney or [Mark R. Feldhaus](#) at (314) 621-2939.