

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

MAVIS L. RAUCH, ADMINISTRATOR :  
OF THE ESTATE OF BUDDY E. :  
WELSHANS, :  
Plaintiff :  
vs. : DOCKET NO: 11-00384  
HCR MANOR CARE, INC. AND :  
MANOR CARE HEALTH SERVICES, :  
NORTH, : CIVIL ACTION  
Defendants :

**OPINION**

On March 9, 2011 Plaintiff filed a Complaint. Plaintiff's Complaint alleges that on or about July 29, 2010 Buddy Welshans underwent a leg amputation at the Williamsport Hospital. On August 6, 2010 Mr. Welshans was admitted to Manor Care Health Services for outpatient rehabilitation and therapy. On August 18, 2010, while still a patient a Manor Care, Mr. Welshans developed a fever and was re-hospitalized at the Williamsport Hospital. On August 23, 2010, Mr. Welshans was discharged from the Williamsport Hospital and was in the process of being transported back to Manor Care for continued rehabilitation and therapy when his wheelchair overturned and he hit his head on the van wall. The van in which Mr. Welshans was being transported was allegedly owned and operated by agents, employees and/or servants of Manor Care. Plaintiff's Complaint alleges that following the incident and "despite his symptoms, on August 24, 2010, Mr. Welshans was sent to out-patient dialysis for his dialysis treatment. Later on August 24, 2010 he was sent for a CT scan of the head which revealed Mr. Welshans suffered from

head trauma. Plaintiff's Complaint includes a claim of negligence relative to Mr. Welshan's accident and relative to Manor Care's "failure to provide proper treatment after the incident" and "failure to recognize the severity of Mr. Welshan's injury."

On March 29, 2011 the Defendants filed Preliminary Objections to Plaintiff's Complaint. The Defendants allege that this Court lacks jurisdiction over this matter pursuant to 42 Pa.C.S.A. § 7303.

42 Pa.C.S.A. § 7303 provides:

A written agreement to subject any existing controversy to arbitration or a provision in a written agreement to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity relating to the validity, enforceability or revocation of any contract.

The issue of whether a particular dispute falls within a contractual arbitration provision is a matter of law for the court to decide. Huegel v. Mifflin Construction Co., Inc., 796 A.2d 350, 354 (Pa.Super. 2002). To determine whether a claim is subject to arbitration, the court must decide first whether a valid agreement exists, and second, whether the dispute is within the scope of the agreement. McNulty v. H&R Block, Inc., 843 A.2d 1267, 1272 (Pa.Super. 2004). In the present action, the parties do not dispute that an agreement to arbitrate was signed, or the validity or enforceability of the agreement. The parties dispute the application of the arbitration agreement to the present action.

The language of the arbitration agreement at issue, is as follows:

**AGREEMENT TO ARBITRATE "DISPUTES":**

Any and all claims or controversies arising out of or *in any way* relating to this Agreement, the Admission Agreement or any of the Patient's stays at this Center, or any Center operated by any subsidiary of HCR-Manor Care, Inc.,

whether or not related to medical malpractice, including but not limited to disputes regarding the making, execution, validity, enforceability, voidability, unconscionability, severability, scope, interpretation, preemption, waiver, or any other defense to enforceability of this Agreement or the Admission Agreement, whether arising out of State or Federal Law, whether existing now or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties (including, without limitation except as indicated, any claim based on Patients' Rights or a claim for unpaid Center charges), regardless of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted to binding arbitration.

The Plaintiff asserts that the agreement to arbitrate does not apply because the dispute does not arise out of or relate to the Arbitration Agreement, Admission Agreement, and/or the Decedent's stay at the Defendant's facility. The Plaintiff argues that as arbitration agreements must be strictly construed, and the agreement was drafted by the Defendant, it does not extend to the present action.

The Defendants assert that the injury arose from the patient's stay and as such, the agreement is applicable. This Court agrees. The decedent was injured while in transport from the hospital back to the Defendant's facility, where he was a patient. The vehicle in which he was riding was allegedly operated by the agents, employees and/or servants of Defendant Manor Care. While in the van, Mr. Welshans was within the control and care of the Defendant's facility. Presumably, as Defendant Manor Care's van is not a common carrier, this service would not have been provided to Mr. Welshans if he had not been a patient of Manor Care's facility. As such, this Court finds that Mr. Welshans alleged injury arose from his stay. As the arbitration agreement contains a mandatory arbitration provision for any and all claims arising or

in any way related to a patient's stay at the Defendant's facility, the present action must be submitted to arbitration.<sup>1</sup>

**ORDER**

AND NOW, this 23<sup>rd</sup> day of May, 2011, following argument on the Defendant's Preliminary Objections, the Preliminary Objections are hereby SUSTAINED and Plaintiff's Complaint is STRICKEN, as this Court lacks jurisdiction over this matter pursuant to 42 Pa.C.S.A. § 7303.

BY THE COURT,

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Richard A. Gray, J.

cc: Thomas A. Waffenschmidt, Esquire - Counsel for Plaintiff:

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100 Four Falls, Suite 515  
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Gary Weber, Esquire

<sup>1</sup> Moreover, Plaintiff's Complaint additionally contends that the Defendant was negligent for failing to provide proper treatment after the incident, and failing to recognize the severity of Mr. Welshan's injury. As these claims do not relate to the time in which Mr. Welshan's was being transported, they clearly and unequivocally were related to Mr. Welshan's "stay."