

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, YOU SHALL
BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCKET
TODAY IS MENDEZ VERSUS HAMPTON
COURT NURSING CENTER.
WHOEVER YOU'RE READY, COUNSEL.
>> GOOD MORNING.
MY NAME IS CHARLES GEORGE.
I REPRESENT THE --
>> SPEAK UP.
>> YOU NEED TO SPEAK INTO THE
MIC.
>> I APOLOGIZE.
I'M HARD-OF-HEARING SO I DIDN'T
WANT TO GET TOO CLOSE AND BE TOO
LOUD, BUT AT THE SAME TIME I'D
LIKE TO START BY POINTING OUT
THAT WE DID A NOTICE OF FILING
OF SUPPLEMENTAL AUTHORITY AND
IT'S STATUTE 400.021, AND THE
REASON WE DID THAT WAS WE ARGUED
THERE WAS NO DEFINITION IN THE
FLORIDA NURSING HOME CHAPTER,
CHAPTER 400, THERE WAS NO
DEFINITION OF RESIDENT DESIGNEE.
IT TURNS OUT THERE IS A
DEFINITION, AND IT ACTUALLY
SUPPORTS OUR CASE, BECAUSE WHAT
WE DID IS WE ARGUED THAT THE
COURT SHOULD APPLY THE
DICTIONARY DEFINITION, SINCE IT
WAS UNDEFINED.
BUT SINCE IT IS DEFINED, IT'S
IMPORTANT BECAUSE WE ARGUE THAT
IS RESIDENT'S DESIGNEE IS
SOMEBODY WHO HAS THE RESIDENT'S

AUTHORITY TO ACT ON THEIR
BEHALF.

THE STATUTE REQUIRES WRITTEN
AUTHORITY.

AND SO THAT'S VERY IMPORTANT.

THE STATUTE ACTUALLY PUTS A
STRONGER STANDARD ON IT.

THE SECOND THING I'D LIKE TO
POINT OUT -- I DON'T THINK IT
WAS CLEAR IN ANYBODY'S BRIEF IS
IS THAT AS YOU DEAL WITH THIS
CASE AND AS YOU LOOK AT THE
ALTERRO CASE, IT DEALT WITH 429
OF THE FLORIDA STATUTES, THE
ASSISTED LIVING SECTION OF THE
STATUTE AND NOT THE NURSING HOME
STATUTE, BUT IT DOES CONTAIN THE
SAME BASIC DEFINITIONS AND
LANGUAGE, INCLUDING A
REQUIREMENT THAT EVERY CONTRACT
BE SIGNED BY THE RESIDENT, THE
RESIDENT'S DESIGNEE, LEGAL
GUARDIAN, SO ON.

I WANTED TO POINT IT OUT SO IT
DOESN'T COME UP LATER AND
SOMEBODY TRIES TO DISTINGUISH IT
BY SAYING LINTON WAS DIFFERENT
BECAUSE IT WAS ASSISTED LIVING
AND NOT A NURSING HOME.

SO IT DOESN'T MAKE A DIFFERENCE
SO MUCH FROM THE STATUTE POINT,
BUT IT MIGHT MAKE A DIFFERENCE
IN YOUR OPINION.

WITH THAT, I'LL BEGIN MY
ARGUMENT.

THE DISTRICT COURT'S OPINION IN
THIS CASE IS WRONG ON THE LAW.
THE DISTRICT COURT IN THIS
SITUATION DETERMINED THAT
FLORIDA'S COMMON LAW,
THIRD-PARTY BENEFICIARY COMMON
LAW, SHOULD TRUMP THE FLORIDA
NURSING HOME STATUTE, WHICH IS
CHAPTER 400, SPECIFICALLY
SECTION 400.1511, WHICH REQUIRES
THAT EVERY SINGLE NURSING HOME
CONTRACT BE SIGNED BY THE
RESIDENT, THE RESIDENT'S
DESIGNEE, SOMEONE WHO HAS
WRITTEN AUTHORITY FROM THE

RESIDENT TO SIGN THE CONTRACT,
AS WELL AS IT MAY ALSO BE SIGNED
BY THE RESIDENT'S LEGAL GUARDIAN
OR SOMEBODY ELSE HOLDING THEIR
POWER OF ATTORNEY AND SO ON.
IN THIS CASE JUAN MENDEZ, JR.
SIGNED A NURSING HOME AGREEMENT
-- AND I'LL EXPLAIN WHY IT'S
WRONG ON THE FACTS, BUT LEGALLY
HE SIGNED IT AS THE PERSON
RESPONSIBLE FOR PAYMENT ON
BEHALF OF HIS FATHER.

HIS FATHER WAS A RESIDENT.
THE RESIDENT DID NOT SIGN THE
CONTRACT.

THE RESIDENT DESIGNEE DID NOT
SIGN THE CONTRACT.

THE RESIDENT DID NOT HAVE A
GUARDIAN, SO THE RESIDENT'S
GUARDIAN DID NOT SIGN THE
CONTRACT.

THE RESIDENT'S POWER OF ATTORNEY
OR DURABLE POWER OF ATTORNEY DID
NOT SIGN THE CONTRACT.

HIS SON SIGNED THE CONTRACT AS A
PERSON RESPONSIBLE FOR PAYMENT
OF THE BILL.

>> SO YOU'RE SAYING BECAUSE THIS
IS A NURSING HOME CONTRACT --

>> I'M SORRY, YOUR HONOR.

>> YOU'RE SAYING BECAUSE THIS IS
A NURSING HOME CONTRACT, HIS SON
HAD TO GO GET A COURT ORDER IN
ORDER TO SIGN THE CONTRACT ON
BEHALF OF HIS FATHER.

IS THAT YOUR POSITION?

>> HE SIGNED THE CONTRACT NOT ON
BEHALF OF HIS FATHER.

HE DIDN'T SIGN ON THE RESIDENT
LINE.

AND HE DIDN'T SIGN ON THE
DESIGNEE LINE.

HE SIGNED AS A PERSON WHO --
WHAT IT SAYS -- AND WHEN YOU
READ THE DEFINITION UNDERNEATH
THE SIGNATURE LINE, IT SAYS I AM
THE PERSON HOLDING MONEY
BELONGING TO THE RESIDENT AND I
WILL PAY YOU OUT OF THOSE FUNDS.
THAT'S WHAT IT SAYS.

SO HE WAS SIGNING AS A PERSON WHO AGREED TO MAKE PAYMENTS OUT OF THE RESIDENT'S FUNDS.

WHAT'S INTERESTING ABOUT THIS CASE --

>> IS THERE ANY DISPUTE ABOUT THE FACT THAT HE DID HAVE APPROPRIATE AUTHORITY TO THE MONEY?

>> I'M SORRY?

>> IS THERE ANY DISPUTE THAT HE HAD APPROPRIATE AUTHORITY TO MAKE PAYMENT FROM THE RESIDENT'S FUND?

>> THAT'S AN INTERESTING QUESTION, YOUR HONOR, BECAUSE THERE WAS NEVER A FACTUAL -- THERE WAS NEVER AN EVIDENTIARY HEARING IN THIS CASE, AND SO WE DON'T HAVE ANY FACTS.

THE ONLY FACTS WE HAVE IN THIS CASE ARE THERE WAS A CONTRACT, IT WAS SIGNED BY JUAN MENDEZ, JR. WHICH DOES NOT NAME HIS FATHER ANY PLACE IN THE CONTRACT.

AND IT HAD AN ARBITRATION AGREEMENT.

THOSE ARE THE ONLY FACTS WE HAVE IN THIS CASE.

THERE'S NOTHING IN THE RECORD, THERE WAS NEVER AN EVIDENTIARY HEARING AND THE COURT NEVER FOUND THAT HE HELD FUNDS AND WAS ABLE TO PAY THOSE FUNDS ON BEHALF OF HIS FATHER.

WHAT IS IN THE RECORD WAS AN AFFIDAVIT WHICH STATED I DID NOT HAVE MY FATHER'S AUTHORITY, HE NEVER DESIGNATED TO ME ANY AUTHORITY, HE DID NOT AUTHORIZE ME TO SIGN THIS CONTRACT, I HAD NO POWER WHATSOEVER.

I SIMPLY SIGNED THE PAPERS BECAUSE THEY TOLD ME TO.

>> NOW, ON THE AGREEMENT ITSELF, OVER THE -- UNDER THE SIGNATURE OF MR. MENDEZ, IT SAYS SIGNATURE OF RESIDENT'S REPRESENTATIVE, IF ANY.

AND THAT'S WHERE HE SIGNED THE CONTRACT.

I MEAN, THAT DOESN'T SAY BASICALLY THAT HE'S JUST SIGNING IT BECAUSE HE'S GOING TO PAY THE MONEY.

IT SAYS HE'S THE RESIDENT'S REPRESENTATIVE.

BUT YOU'RE SAYING HE WAS NOT IN FACT THE REPRESENTATIVE.

>> THE RECORD IS ABSOLUTELY CLEAR ON THAT.

AT THE HEARING WE PROFFERED AN AFFIDAVIT WHERE MR. MENDEZ CLEARLY AND EXPLICITLY STATED THAT HE HAD NO AUTHORITY TO ACT ON BEHALF OF HIS FATHER.

WHAT'S KIND OF INTERESTING, YOUR HONOR, ABOUT THAT SIGNATURE LINE AND THE RESIDENT'S REPRESENTATIVE DESIGNATION IS, THAT'S KIND OF A SPIN.

IT MAKES IT SOUND KIND OF IMPORTANT.

IT MAKES IT SOUND KIND OF LEGAL. BUT THE PROBLEM IS IS THAT THE STATUTE, 400.151, DOESN'T TALK ABOUT THE RESIDENT'S REPRESENTATIVE AT ALL.

IT SAYS IT MUST BE SIGNED BY THE RESIDENT'S DESIGNEE, WHO MUST HAVE THE AUTHORITY IN WRITING.

THE RESIDENT THEMSELVES --

>> JUSTICE QUINCE WAS JUST ASKING YOU ON THE ACTUAL CONTRACT -- AND IT'S INTERESTING BECAUSE YOU'VE GOT THEIR REPRESENTATIVE AND THEN YOU'VE GOT DIFFERENT LINES, INCLUDING DESIGNEE OR LEGAL GUARDIAN, AND THEN THERE'S -- AT THE NEXT PAGE IT SAYS SIGNATURE OF RESPONSIBLE PARTY, IF ANY.

HE DIDN'T SIGN THERE.

HE SIGNED UP AT SIGNATURE OF RESIDENT'S REPRESENTATIVE, IF ANY.

>> THE LAST PAGE SAYS LEGAL GUARDIAN, SIGNATURE OF RESIDENT LEGAL GUARDIAN.

SO IT SEEMS TO ME HE SIGNED IN TWO PLACES AT LEAST REPRESENTING THAT HE'S HIS FATHER'S LEGAL GUARDIAN OR LEGAL REPRESENTATIVE.

>> HE WAS NEITHER, YOUR HONOR. HE DID SIGN --

>> PAGE 7 AND PAGE 9 OF THE AGREEMENT.

>> YES, MA'AM.

>> I ASSUME THAT'S THE PLACE WHERE IT'S HIS SIGNATURE, WHERE HE SIGNS AS THE SIGNATURE OF THE RESIDENT'S REPRESENTATIVE, IF ANY, AND THEN ON 9 IT SAYS SIGNATURE OF RESIDENT LEGAL GUARDIAN OR HEALTH CARE SURROGATE.

AND HE SIGNED ON THAT LINE, ALSO.

>> I APOLOGIZE, YOUR HONOR. I'M LOOKING.

>> PAGE 7 AND PAGE 9 OF THE AGREEMENT.

>> I APOLOGIZE.

MY SECRETARY DIDN'T PUT IT IN THE NOTEBOOK.

I KNOW I PUT IT IN THE BRIEF.

>> MY POINT HERE IS HE IS AT LEAST MAKING A REPRESENTATION TO THE NURSING HOME THAT HE IS EITHER THE RESIDENT'S REPRESENTATIVE, THE RESIDENT'S LEGAL GUARDIAN OR THE RESIDENT'S HEALTH CARE SURROGATE.

>> YOUR HONOR, I'M GOING TO ASK YOU TO HOLD THAT UNTIL I HAVE AN OPPORTUNITY TO GO THROUGH THE RECORD.

>> WELL, NOTWITHSTANDING THAT, IN ORDER TO SIGN ON THAT PAGE YOU HAVE TO HAVE SOMETHING IN WRITING TO AUTHORIZE YOU TO DO IT.

YOU JUST CAN'T SIGN IT NAKEDLY WITHOUT SOME AUTHORIZATION.

NOW, A LEGAL GUARDIAN REQUIRES A GUARDIANSHIP ORDER SIGNED BY THE JUDGE.

HEALTH CARE SURROGATE ALSO

REQUIRES SOMETHING IN WRITING,
EITHER POWER OF ATTORNEY -- NONE
OF THAT HAPPENED, RIGHT?

>> NONE OF THAT HAPPENED.

>> SO THEREFORE IT'S CONTRARY TO
THE STATUTE.

>> NONE OF THAT HAPPENED.

>> I HAVE A QUESTION HERE ABOUT
THIS WHOLE ISSUE ABOUT
REPRESENTATIVE OR
NON-REPRESENTATIVE.

IS THE ISSUE HERE WHETHER THE
NURSING HOME RESIDENT WAS A
THIRD-PARTY BENEFICIARY OF THE
CONTRACT?

>> THE THIRD DISTRICT FRAMED THE
ISSUE AS WHETHER OR NOT -- THEY
FOUND THE STATUTE IRRELEVANT AND
THEY FRAMED THE ISSUE AS WHETHER
OR NOT THE RESIDENT WAS THE
THIRD-PARTY BENEFICIARY WHERE
THE RESIDENT RESIDED IN A
NURSING HOME AND WHERE THE
CONTRACT WAS FOR THE BENEFIT,
PRIMARY BENEFIT OF THE RESIDENT.
AND THERE WAS NO EVIDENCE OF
THAT.

>> BUT LET ME ASK YOU THIS.
AND THIS IS A FRIENDLY QUESTION,
I THINK.

DOES THE NURSING HOME RELY
SOLELY ON THE THIRD-PARTY
BENEFICIARY STATUS OR THEIR
CLAIM THAT THAT EXISTS?

IS THAT CORRECT?

>> THAT'S WHAT THEY'VE DONE IN
THEIR BRIEF.

>> OKAY.

>> THAT'S WHAT THEY'VE DONE IN
THEIR BRIEF.

>> BUT I WANT TO UNDERSTAND --
EVERY DAY IN THIS STATE, YOU
KNOW, ELDERLY PARENTS ENTER
NURSING HOMES AND WE'RE REALLY
TALKING NOW ABOUT WHETHER HE'S
RESPONSIBLE FOR PAYING THE BILL,
THAT SOMEHOW THEY GOT STUCK WITH
HAVING TO -- NONPAYMENT.

BUT WE'RE TALKING ABOUT WHETHER
HE HAD THE AUTHORITY TO, IN A

TORT ACTION, BASICALLY, TO ALLOW
ARBITRATION TO BE THE SOLE
MEANS, CORRECT?

SO HERE'S MY QUESTION.

WE ALL KNOW WHAT LEGAL GUARDIAN
IS, POWER OF ATTORNEY.

WHAT IS DESIGNEE?

AND THAT'S USED IN THE STATUTE.

WHAT IS THE LEGAL CONCEPT OF A
DESIGNEE?

IS THAT SOMETHING AGAIN THAT'S
DIFFERENT FROM -- IT MUST BE
DIFFERENT FROM GUARDIAN, POWER
OF ATTORNEY.

IS THAT WHAT YOU WERE SAYING AT
THE BEGINNING?

THIS DESIGNEE, IS IT DEFINED
ANYWHERE, AND WHAT DOES IT MEAN?
WHAT IS A DESIGNEE?

>> WELL, STATUTE 400.021(17)
DEFINES IT, MEANS A PERSON OTHER
THAN THE OWNER, ADMINISTRATOR,
OF THE FACILITY DESIGNATED IN
WRITING BY A RESIDENT OR A
RESIDENT'S GUARDIAN IF THE
RESIDENT IS ADJUDICATED
INCOMPETENT TO BE THE RESIDENT'S
REPRESENTATIVE FOR A SPECIFIC
LIMITED PURPOSE.

>> OKAY.

SO IT IS DEFINED AND IT HAS TO
BE IN WRITING AND THERE'S NO
QUESTION HERE THERE WAS NO
DESIGNATION BY THE RESIDENT.

IS THAT CORRECT?

>> THAT'S CORRECT, YOUR HONOR.

>> SO I THINK YOU WANT TO GO ON
TO THE THIRD-PARTY BENEFICIARY
ISSUE?

>> WELL, THE TWO KIND OF COME
TOGETHER, BECAUSE THE DISTRICT
COURTS HAVE HELD IN OTHER CASES
DEALING WITH THIS ISSUE THAT
WHEN YOU HAVE A WRITING, A POWER
OF ATTORNEY, A DURABLE POWER OF
ATTORNEY AND SO ON, A
GUARDIANSHIP, EVEN, IT CAN BE
LIMITED TO A SPECIFIC TERM OR IT
CAN BE WIDE OPEN.

AND IF IT'S LIMITED, IF IT'S

SPECIFIC, YOU CAN'T GO OUTSIDE OF THAT AND SIGN A CONTRACT AND SIGN AWAY RIGHTS TO TRIAL BY JURY BY HAVING AN ARBITRATION AGREEMENT SLID IN THERE.

FOR INSTANCE, YOU GIVE ME A POWER OF ATTORNEY.

I GO WITH YOU TO A NURSING HOME. YOU SAY DEAL WITH IT, YOU'RE MY POWER OF ATTORNEY.

I SIGN.

IF THE POWER OF ATTORNEY DOES NOT SAY THAT YOU'VE GIVEN ME THE RIGHT TO DO MORE THAN MAKE MEDICAL DECISIONS ON YOUR BEHALF, MORE THAN CHECK YOU IN AND SIGN YOU UP, UNLESS THE POWER OF ATTORNEY SAYS YOU HAVE THE RIGHT TO WAIVE MY CONSTITUTIONAL RIGHTS, YOU HAVE THE RIGHT TO SIGN AN ARBITRATION AGREEMENT, YOU HAVE THE RIGHT TO COMMIT MY ASSETS, YOU HAVE THE RIGHT TO WHATEVER, UNLESS IT SAYS THAT, THE DISTRICT COURTS HAVE HELD THAT THE ARBITRATION AGREEMENT IS NOT BINDING BECAUSE ALTHOUGH THERE WAS A POWER OF ATTORNEY, A DESIGNEE, IN ESSENCE, IF IT DIDN'T SAY YES, YOU CAN SIGN AWAY THE RIGHT TO TRIAL BY JURY BY SIGNING AN ARBITRATION AGREEMENT, WE'RE NOT GOING TO ENFORCE IT.

AND THE REASON IS THAT'S ONE OF THE MOST SACRED RIGHTS WE HAVE, IS THE RIGHT TO A TRIAL BY JURY. AND, YOUR HONOR, JUSTICE QUINCE, I'M GOING TO LOOK IN MY RECORD. I'M GOING TO SAVE THE REST OF MY TIME FOR REBUTTAL.

>> MAY IT PLEASE THE COURT, MY NAME IS THOMAS VALDEZ, AND ALONG WITH MY PARTNER I REPRESENT THE RESPONDENT IN THIS CASE, HAMPTON COURT NURSING CENTER.

THIS COURT SHOULD RESOLVE THE EXPRESS AND DIRECT CONFLICT BETWEEN THE FIRST AND THE THIRD DCA ON ONE HAND AND THE FIFTH

AND SECOND DCA ON THE OTHER BY AFFIRMING THE DECISIONS AND REASONING IN THE LINTON CASE, THE FIRST DISTRICT CASE, AND IN THIS CASE, THE THIRD DISTRICT CASE, AND DISPROVING AND QUASHING THE DECISIONS IN PERRY AND YARAWSKY, BECAUSE FORMER RECOGNIZED CORRECTLY AND APPLY CORRECTLY LONG-STANDING PRINCIPLES OF BENEFICIARY LAW AND RELATED PRINCIPLES OF ESTOPPEL BY ACCEPTANCE OF BENEFITS.

WHILE THE LATTER FAILED TO COMPLY CANNOT BE RECONCILED WITH THOSE PRINCIPLES AS NOTED IN THIS CASE.

IN EACH AND EVERY ONE OF THESE FOUR KEY CASES --

>> SO CAN WE JUST GO BACK TO WHAT WE SPENT A LOT OF TIME ON IN THE FIRST PART OF THE ARGUMENT?

THE NURSING HOME AND WHAT JUSTICE CANADY ASKED IS NOT MAKING AN ARGUMENT THAT HE WAS A -- WAS ANY OF THE STATUSES UNDER THE NURSING HOME STATUTE.

>> THAT'S CORRECT, YOUR HONOR.

>> OKAY.

SO WE'RE GOING BASICALLY ON WHETHER HAVING ACCEPTED THE BENEFITS, THEY CAN BE ESTOPPED. BUT IS IT DIFFERENT WHEN -- IF WE WERE TALKING ABOUT THAT SHE--HE -- THAT THERE WAS AN UNPAID BILL AND THEY WERE SUING FOR AN UNPAID BILL VERSUS THAT SHE--HE HAS BEEN INJURED OR I DON'T KNOW WHAT THE UNDERLYING CASE IS, BUT SOMETHING THAT THE NURSING HOME DID WRONG AND NOW THE PLAINTIFF WANTS TO SUE FOR THE NEGLIGENCE OF THE NURSING HOME AS TO WHETHER THE ISSUE OF WHETHER ARBITRATION AND THE LIMIT ON THE RIGHT TO TRIAL BY JURY, IS THAT -- HOW DOES THAT FIT INTO THE OVERALL ESTOPPEL

THIRD-PARTY BENEFICIARY THEORY?
I MEAN, DO YOU SEE IT AS
DIFFERENT, OR IS IT THE EXACT
SAME?

IT DOESN'T MATTER WHETHER THERE
WAS AN UNPAID NURSING HOME, YOU
KNOW, SOME SERVICES THAT WEREN'T
COVERED BY MEDICARE OR MEDICAID,
OR THAT YOU'RE SUING UNDER THE
RIGHT AT COMMON LAW TO TRIAL BY
JURY AND NOW YOU SAID, NOPE,
BECAUSE YOU WERE IN OUR
RESIDENCE AND WE DIDN'T GET A
PROPER SIGNATURE EVEN THOUGH WE
KNOW WE'RE SUPPOSED TO THAT YOU
CAN'T HAVE A TRIAL BY JURY?

>> YOUR HONOR, I DON'T SEE THOSE
AS DIFFERENT BECAUSE THE
ARBITRATION CLAUSE IN THIS CASE
ENCOMPASSES BOTH TYPES OF
DISPUTES, BOTH DISPUTE REGARDING
A BILL OR A TORT DISPUTE.
THEY'RE BOTH ENCOMPASSED WITHIN
THE --

>> WELL, MAYBE THERE THEY'D SAY,
NO, YOU GOT TO SUE US IN A COURT
OF LAW.

I'M JUST TALKING ABOUT WHETHER
YOU GET -- YOU'RE NOT SAYING
HERE THAT SHE GAVE UP HER RIGHT
TO SUE, RIGHT?

BUT I'M GIVING A SITUATION WHERE
MAYBE THIRD -- YOU SAID
ESTOPPEL.

>> THIRD-PARTY BENEFICIARY AND
ESTOPPEL.

>> I DON'T KNOW HOW ESTOPPEL
APPLIES THAT YOU'RE STOPPED FROM
SUING IN A COURT OF LAW BECAUSE
YOU CAME INTO OUR NURSING HOME.
AND EVEN THOUGH WE DIDN'T HAVE
YOU PROPERLY EXECUTE THE
CONTRACT, WE'RE GOING TO HOLD
YOU TO A PROVISION THAT YOU
NEVER AGREED TO BY SOMEBODY WHO
HAD NO AUTHORITY TO SIGN FOR
YOU.

>> ALL RIGHT, YOUR HONOR.
THIS IS ACTUALLY THE FACT
PATTERN THAT'S BEEN PRESENTED IN

EACH OF THE FOUR CASES I JUST TALKED ABOUT, LINTON, PERRY, YARAWSKY AND THIS CASE.

A CLOSE RELATIVE OF THE RESIDENT SIGNED A CONTRACT FOR THE PURPOSES OF SECURING SKILLED NURSING CARE AND SERVICES FOR THE RESIDENT, A CLOSE LOVED ONE. AND IN DOING THAT IN EACH CASE THE RESIDENT WAS OR SHOULD HAVE BEEN BOUND TO ARBITRATE PURSUANT TO THE ARBITRATION CLAUSES CONTAINED IN THOSE CONTRACTS UNDER A STRAIGHTFORWARD, THIRD-PARTY BENEFICIARY ANALYSIS BECAUSE THEY WERE -- THE CONTRACT -- AND THE ONE IN THIS CASE IS VERY CLEARLY MEANT TO BENEFIT MR. MENDEZ, SR. AND THE CONTRACTS IN THE OTHER CASES ARE AS WELL.

ALTERNATIVELY, THE RESIDENT SHOULD BE BOUND UNDER THE CLOSELY-RELATED CONCEPT OF ESTOPPEL BY BENEFITS BECAUSE THE LAW IS VERY CLEAR AND EVEN IN THE SECOND, WHERE ONE OF THE CONFLICT CASES, YARAWSKY COMES FROM, IN STALLEY BACK IN 2010 THEY RECOGNIZED THE PRINCIPLE THAT AN INDIVIDUAL WHO MAKES USE OF A CONTRACT SO LONG AS IT WORKS TO HIS OR HER BENEFIT OR ADVANTAGE IS ESTOPPED FROM AVOIDING THE ARBITRATION PROVISION OF THE CONTRACT.

>> [INAUDIBLE] APPLY TO A PARTY WHO IS NOT COMPETENT?

>> YOUR HONOR, I DON'T THINK THAT -- WELL, LET ME BACK UP FOR A SECOND.

A STRAIGHT THIRD-PARTY BENEFICIARY ANALYSIS WITHOUT THE INCLUDED ESTOPPEL WOULD APPLY THERE.

I'M NOT SURE THAT THE LAW IS 100% CLEAR ON THE ESTOPPEL ARGUMENT.

I WOULD TEND TO THINK THE ESTOPPEL ARGUMENT WOULD NOT

APPLY WHERE SOMEONE IS MENTALLY
INCOMPETENT, INCAPACITATED
DURING THE ENTIRE RESIDENCY.
BUT I DO THINK THAT A STRAIGHT
THIRD-PARTY BENEFICIARY ANALYSIS
WITHOUT INCLUDING THE ESTOPPEL
WOULD APPLY.

>> LET ME ASK YOU ABOUT THE
THIRD-PARTY BENEFICIARY
ANALYSIS.

NOW, I UNDERSTAND THAT IF
SOMEONE IS A THIRD-PARTY
BENEFICIARY OF A CONTRACT AND
THEY SEEK TO ENFORCE RIGHTS
UNDER THAT CONTRACT, THEY'RE
GOING TO BE BOUND BY THE TERMS
OF THE CONTRACT THEY'RE SEEKING
TO ENFORCE.

THAT SEEMS TO ME TO BE PRETTY
INDISPUTABLE.

>> I AGREE, YOUR HONOR.

>> BUT ISN'T THIS A RATHER
DIFFERENT SITUATION?
BECAUSE WE HAVE A TORT CLAIM
HERE THAT'S NOT REALLY BASED ON
THE CONTRACT.

THE CLAIM IS NOT SEEKING TO
ASSERT ANY RIGHTS UNDER THE
CONTRACT.

AND SO HOW IS IT THAT A PERSON
WHO DID NOT CONSENT TO THE
CONTRACT, DID NOT -- HAD NO
LEGALLY -- A PERSON WHO HAD NO
LEGAL AUTHORITY TO REPRESENT
THAT PERSON, HOW IS IT THAT THAT
PERSON IS THEN BOUND BY A
PROVISION IN THE CONTRACT THAT
WOULD COVER TORT CLAIMS AND THE
PERSON IS NOT SEEKING TO ENFORCE
THE CONTRACT?

YOU SEE THE DISTINCTION THERE?

>> I DO, YOUR HONOR.

>> I'M SURE YOU'RE GOING TO SAY
IT'S NOT A SIGNIFICANT OR
MATERIAL DISTINCTION, BUT WHY
ISN'T IT MATERIAL?

>> YOUR HONOR, THE WAY THAT THE
ARBITRATION AGREEMENT IS
PHRASED, IT WOULD COVER EITHER
-- IT WOULD COVER THE --

>> WELL, I UNDERSTAND THAT, BUT YOU'VE GOT TO HAVE SOME WAY FOR THIS PARTICULAR PERSON, WHO'S -- OR THE CLAIMANTS UNDER THAT PERSON, THAT THAT PERSON IS BOUND BY IT.

AND I'M JUST STRUGGLING -- I'M STRUGGLING TO SEE WHY IT'S ANY DIFFERENT IN THIS CASE THAN IT WOULD BE IF MY NEIGHBOR -- IF I WERE INCOMPETENT AND MY NEIGHBOR TOOK ME AND SIGNED SOME PAPERS, JUST SIGNED WHATEVER THEY PUT IN FRONT OF HIM, AND THEN -- AND THEN I'M ON THE HOOK WHEN I'VE GOT NO LEGAL CONNECTION AND NO ONE'S HAD ANY LEGAL AUTHORITY TO DO ANYTHING TO BIND ME.

>> YOUR HONOR, LET ME ADDRESS BOTH OF THOSE PARTS.

START WITH THE SECOND ONE.

IN THE MENDEZ CASE AND IN EACH ONE OF THE OTHER KEY CASES THAT I'VE CITED, WE WEREN'T TALKING ABOUT STRANGERS.

WE WERE TALKING ABOUT CLOSE RELATIVES ENTERING CONTRACTS TO OBTAIN NURSING CARE AND SERVICES FOR THEIR LOVED ONES.

AND BY ENTERING THE CONTRACT IN THIS PARTICULAR CASE, THAT'S WHAT TRIGGERS THE ACCEPTANCE OF THE RESIDENT.

THAT'S WHAT TRIGGERS THE CARE AND TREATMENT.

THERE IS NO RESIDENCY ABSENT THIS CONTRACT.

AND IF THIS PERSON IS NOT A RESIDENT OF THE NURSING FACILITY PURSUANT TO THE CONTRACT, CHAPTER 400 AND THE RIGHTS THAT IT GIVES NEVER KICK IN.

>> WELL, I'M NOT SURE I UNDERSTAND THE SIGNIFICANCE OF THAT.

OBVIOUSLY, IF SOMEONE HAPPENS TO BE BROUGHT TO A NURSING HOME AND THEY'RE TAKEN IN AND THEY'RE TAKEN CARE OF AND THROUGH SOME ADMINISTRATIVE OVERSIGHT, PAPERS

ARE NEVER SIGNED, WELL, I DON'T BELIEVE THAT THERE'S GOING TO BE LIKE THEY DON'T EXIST AND THAT THEY HAVE NO LEGAL RIGHTS FOR PROPER CARE WHILE THEY'RE THERE.

>> NO, YOUR HONOR.

I'M NOT SUGGESTING THAT.

BUT I'M SAYING THAT THE CONTRACT -- NO MATTER HOW IT'S ASSENTED TO -- IT COULD BE ASSENTED TO IN WRITING.

IT COULD BE ASSENTED TO BY CONDUCT.

IT'S ASSENT TO THE CONTRACT AND THE TERMS OF THE CONTRACT THAT CONFER UPON THE RESIDENT THE STATUS OF RESIDENT.

>> LET ME CHANGE IT A LITTLE BIT.

LET'S ASSUME JUST THROUGH SHEER OVERSIGHT NOBODY SIGNS THIS PIECE OF PAPER AND THE PERSON IS TAKEN IN AND CARED FOR, BUT THEN SOMETHING HAPPENS.

ARE YOU SAYING THAT JUST BECAUSE THEY TOOK THEM IN, THAT THEY CAN SAY YOU'RE BOUND BY WHATEVER TERMS OF AN UNSIGNED CONTRACT WE HAVE?

>> WELL, YOUR HONOR, YES, BECAUSE THE LAW --

>> WHERE IN THE LAW HAVE WE EVER RECOGNIZED THAT SOMEONE IS BOUND BY A WRITTEN DOCUMENT THAT THEY'VE NEVER AGREED TO?

>> THE COURTS HAVE RECOGNIZED IT IN TWO VERY LIMITED SCENARIOS, BOTH OF WHICH THE FACTS OF THIS CASE ARE WITHIN THE AMBIT OF. ONE OF THOSE IS A THIRD-PARTY BENEFICIARY ANALYSIS, WHERE THE CASE LAW SAYS THE BENEFICIARY DOESN'T EVEN NEED TO BE AWARE THAT THE CONTRACT'S BEEN SIGNED TO GIVE THEM THE BENEFITS.

>> WHAT CASE IS THAT?

>> YOUR HONOR, IT WAS CITED IN MY BRIEF AND IT WAS CITED IN --

>> IS THAT A SUPREME COURT CASE?

>> I DON'T BELIEVE SO, YOUR

HONOR.

>> BUT EVEN THERE, TO BE A
THIRD-PARTY BENEFICIARY TO A
CONTRACT, THERE MUST BE A
CONTRACT.

IF THERE'S NO SIGNED CONTRACT,
IS THERE REALLY A CONTRACT?

>> WELL, YES, YOUR HONOR,
BECAUSE OF THE SECOND POINT.

IF THE COURT WERE TO REJECT THE
THIRD-PARTY BENEFICIARY ANALYSIS
COMPLETELY, THE COURTS OF THIS
STATE HAVE HELD REPEATEDLY THAT
PARTIES -- AGAIN, THERE'S A VERY
LIMITED EXCEPTIONS TO WHEN A
NONSIGNATORY CAN BE HELD TO AN
ARBITRATION AGREEMENT CONTAINED
IN A CONTRACT.

>> WE'RE TALKING ABOUT A
NONSIGNED PIECE OF PAPER.
THAT'S WHAT WE'RE TALKING ABOUT
HERE.

YOU KEEP SAYING THE AGREEMENT,
AND WHAT I'M ASKING YOU IS IF WE
DON'T HAVE ANYTHING SIGNED.

>> WELL, IF THERE'S NOTHING
SIGNED, YOUR HONOR, BY THE
RESIDENT -- AND THIS WAS SIGNED
BY --

>> BY ANYONE.

>> SO YOU'RE ASKING A
HYPOTHETICAL UNRELATED TO THIS
CASE.

>> NO, I'M NOT.

AND I'LL TELL YOU WHY.

BECAUSE A CAB DRIVER COULD PULL
UP WITH SOMEONE IN THE BACK OF
THEIR CAR, BRING THEM IN AND
THEY HOLD OUT A PIECE OF PAPER
AND THEY SIGN IT.

SO WHAT'S A CAB DRIVER GOT TO DO
WITH THIS?

THIS CONTRACT IS NO DIFFERENT IF
YOU DON'T HAVE LEGAL AUTHORITY
TO SIGN IT THAN IF I HAD SIGNED
IT FOR THIS PERSON.

>> YOUR HONOR, THE CASE LAW ON
THIRD-PARTY BENEFICIARY AND
AGAIN ON ESTOPPEL, THIS IS VERY
CLEAR THAT A NONSIGNATORY CAN BE

BOUND.

>> IS THAT ONE OF THE CONFLICT CASES?

>> YES, YOUR HONOR.

>> SO THREE CIRCUIT COURTS -- I MEAN DISTRICT COURTS HOLD OPPOSITE --

>> ACTUALLY, NO, YOUR HONOR. THE SECOND DISTRICT IN THE STALLEY CASE STATED THAT PROPOSITION UNEQUIVOCALLY BUT THEY SEEMED TO HAVE FORGOTTEN IT IN YARAWSKY.

>> BUT, YOU SEE, ONCE YOU GET TO ESTOPPEL, NOW WE'RE OUTSIDE THE CONTRACTUAL REALM.

THAT'S WHAT I WAS TRYING TO DISCUSS BEFORE, WHICH IS THAT IT'S ONE THING IF THE NURSING HOME WAS SUING, IN MY VIEW, IN A COURT OF LAW FOR UNPAID BENEFITS, YOU KNOW, THE BILL-- THAT THEY DIDN'T PAY THE BILL, THAT THERE WAS A BALANCE DUE. AND THEN YOU GO INTO A COURT OF LAW, YOU SAY, NO, WE DIDN'T HAVE A WRITTEN CONTRACT, BUT THEY WERE IN THE NURSING HOME FOR TWO YEARS AND WE GAVE THEM ALL THESE SERVICES.

SO THEN IT'S OUTSIDE THE CONTRACT.

BUT WHAT YOU'RE TRYING TO DO IS ENFORCE A VERY SPECIFIC AGREEMENT THAT REQUIRES THAT SOMEBODY FOREGO THEIR RIGHT TO TRIAL BY JURY WHEN THE CONTRACT -- AND YOU ADMIT -- IS NOT A VALID WRITTEN CONTRACT.

SO I JUST DON'T KNOW -- AGAIN, I APPRECIATE THAT THESE ARE DIFFICULT SITUATIONS FOR NURSING HOMES, BUT I WOULD IMAGINE MANY OF THEM FIGURE OUT HOW TO ENSURE THAT THERE IS A LEGAL CONTRACT AT THE TIME THE RESIDENT COMES IN OR SHORTLY THEREAFTER.

AND TO ME, THE LEGISLATURE IS VERY CLEAR THAT THEY DON'T WANT JUST ANYBODY SIGNING THESE

CONTRACTS.

THEY REQUIRE SOME WRITTEN
AUTHORIZATION.

SO HELP ME ON HOW ESTOPPEL HELPS
YOU TO GET TO THE POINT THAT
THAT WOULD MEAN THAT MR. MENDEZ,
SR. GAVE UP HIS RIGHT TO TRIAL
BY JURY.

>> YOUR HONOR, FIRST I WANT TO
DISAGREE WITH THE PROPOSITION
THAT MY POSITION IS THERE'S NOT
A VALID CONTRACT.

I BELIEVE THERE IS A VALID
CONTRACT SIGNED BY MR. MENDEZ,
JR. AND THAT HIS FATHER'S A
THIRD-PARTY BENEFICIARY OF THAT.
IN THE ALTERNATIVE, I BELIEVE IT
ALSO SUPPORTS ESTOPPEL.

>> SO YOU COULD SUE MR. MENDEZ,
JR. FOR THE UNPAID BILL?

>> I BELIEVE SO, UNDER THE TERMS
OF THE CONTRACT, UP TO A POINT.

>> IS THIS THE SAME SON WHO'S
NOW SUING ON BEHALF OF HIS
FATHER?

>> IT IS, YOUR HONOR.

IT'S THE SAME SON WHO BROUGHT
SUIT WHILE HIS FATHER WAS STILL
A RESIDENT AT THE FACILITY,
STILL RECEIVING THE BENEFITS
UNDER THE NURSING HOME CONTRACT.
AND, AGAIN, MY ESTOPPEL ARGUMENT
GOES BACK TO THE POINT MADE BY
THE SECOND DISTRICT IN STALLEY,
THAT AN INDIVIDUAL MAKES USE OF
A CONTRACT, IN THIS CASE FOR
FOUR YEARS.

ONE YEAR AFTER THIS APPEAL HAS
ALREADY BEEN STARTED AND IS WELL
UNDERWAY, STILL MAKING USE OF
THE TERMS OF THE RESIDENCY
CONTRACT.

AND, I MEAN, FOUR YEARS, NEARLY
FIVE YEARS HE TAKES ADVANTAGE OF
THE BENEFITS OF THIS WITH HIS
SON.

AT THE BEGINNING IT'S IMPORTANT
TO NOTE ALSO, AT THE BEGINNING
MR. MENDEZ, SR. WAS
INCAPACITATED, BUT LATER HE

REGAINED HIS CAPACITY AND IN 2012 EXECUTED A DURABLE POWER OF ATTORNEY THAT HIS SON WAS ALLOWED TO ACT ON HIS BEHALF. BUT IT'S IMPORTANT BASED ON A QUESTION THAT WAS ASKED EARLIER BY JUSTICE CANADY THAT WE REMEMBER THAT THIS GENTLEMAN DID REGAIN HIS CAPACITY.

SO HE KNEW WHAT WAS GOING ON. HE KNEW WHAT HIS SON WAS DOING. HE KNEW THAT HE WAS NOT THERE GETTING CARE FOR FREE. HE KNEW THAT HE WAS ADMITTED PERSONALLY TO THE TERMS OF THE CONTRACT.

HE MADE USE OF THE BENEFITS OF THE TERMS OF THIS CONTRACT FOR FOUR YEARS AND SHOULD NOT BE -- AND SHOULD BE ESTOPPED FROM SAYING AFTER HE'S DONE THAT THAT, WELL, NOW WE DON'T WANT TO ARBITRATE, PARTICULARLY WHERE IT'S HIS SON WHO SIGNED, HIS SON WHO TRIED TO ENFORCE, HIS SON WHO'S THE BENEFICIARY IN THIS PARTICULAR CASE.

AND THE IDEA THAT THE LEGISLATURE HERE HAS VIA THE STATUTE THAT EXISTS, THAT'S PUT IN PLACE PROTECTIONS TO AVOID THAT ANYONE OFF THE STREET CAN SIGN A CONTRACT, I ABSOLUTELY AGREE WITH THAT.

I THINK IF I WERE HERE IN FRONT OF THE COURT, I WOULDN'T BE HERE IN FRONT OF THE COURT WITH A CASE LIKE THAT.

BUT IN EVERY ONE OF THE CASES WE'RE TALKING ABOUT, LINTON, PERRY, YARAWSKY, MENDEZ, WE'RE TALKING ABOUT A CLOSE RELATIVE THAT ACTED UPON BEHALF OF THEIR BELOVED RELATIVE TO GET THEM NURSING CARE AND SERVICES.

AND I THINK THAT THERE'S DEFINITELY A DIFFERENCE BETWEEN THAT AND THE HYPOTHETICAL SITUATION WHERE IT'S SOMEBODY OFF THE STREET.

>> THEY HAVE MORE AUTHORITY THAN THE MAN OFF THE STREET.

I LOVE MY SISTER, BUT I HAVE NO MORE AUTHORITY TO SIGN A CONTRACT FOR HER THAN A MAN ON THE STREET.

>> YOUR HONOR, --

>> THAT'S WHY WE HAVE THESE THINGS, DON'T WE?

WHY DO WE EVEN HAVE POWERS OF ATTORNEY IF ALL WE GOT TO SAY IS A FAMILY MEMBER CAN BIND ANOTHER FAMILY MEMBER TO WHATEVER THEY SIGN.

>> WELL, YOUR HONOR, THE PROBLEM WITH THAT IS THERE ARE CASES LIKE THIS EVERY DAY THAT HAPPEN IN THE STATE OF FLORIDA, WHERE RESIDENTS DID NOT HAVE THE FORESIGHT, UNFORTUNATELY, OR WERE NOT WILLING TO PUT -- EITHER DIDN'T KNOW OR WEREN'T WILLING TO --

>> THAT'S NOT THE LAW. THAT'S WHAT'S HAPPENING.

IT IS --

>> BUT --

>> COULD I FINISH?

>> ABSOLUTELY, YOUR HONOR.

>> IT IS -- IT IS VERY, VERY DIFFICULT UNDER THESE CIRCUMSTANCES.

BUT YOU CAN'T THROW THE LAW OUT THE WINDOW SIMPLY BECAUSE IT'S A DIFFICULT CIRCUMSTANCE.

ONE NEEDS TO APPLY THE LAW AS IT HAS BEEN ESTABLISHED THROUGH THE COMMON LAW AND NOW BY STATUTE TO THESE DIFFICULT CIRCUMSTANCES.

>> YOUR HONOR, I AGREE THAT THE COURT SHOULD APPLY THE LAW, BUT I THINK THE LAW IN TERMS OF THIRD-PARTY BENEFICIARY IS VERY CLEAR.

WHERE YOU SIGN AND MAKE YOURSELF FINANCIALLY RESPONSIBLE FOR PAYING FOR THE NURSING CARE FOR YOUR CLOSE RELATIVE, YOU'RE BINDING YOURSELF TO THAT CONTRACT.

CERTAINLY UNDER THIS CONTRACT IN THIS CASE, THAT'S WHAT YOU DEFINITELY DO.

IT SAYS AGREEMENT FOR CARE. AND IT TALKS ABOUT WHAT HE'S AGREEING TO.

HE'S AGREEING TO PAY UP TO -- YOU KNOW, UP TO A CERTAIN AMOUNT, BASICALLY THE EQUIVALENT AMOUNT HIS FATHER WOULD HAVE TO PAY IF HE WAS DOING IT.

HE'S ENTERING A CONTRACT TO PAY FOR HIS FATHER TO GET THIS CARE AND ARBITRATE ANY DISPUTES THAT MIGHT ARISE.

SO HE'S BOUND TO THAT HIMSELF INDIVIDUAL BECAUSE OF THE WAY HE SIGNED THIS CONTRACT.

>> SO YOU'RE SAYING THE FATHER IS AGED?

>> NO, YOUR HONOR.

NO.

I'M SAYING THAT HE SIGNED -- IF AS THE SECOND DISTRICT HAS SAID, FIFTH DISTRICT HAS SAID, THESE FAMILY MEMBERS SIGNED IN THEIR INDIVIDUAL CAPACITIES AND THEREBY PUT THEMSELVES ON THE FINANCIAL HOOK, SO TO SPEAK, IN ORDER TO OBTAIN NURSING CARE AND SERVICES PURSUANT TO A CONTRACT, JUST LIKE WHAT HAPPENED IN THIS CASE, AND WHERE THOSE INDIVIDUALS ACTUALLY GET THOSE SERVICES, IN THIS CASE ACCEPT THOSE BENEFITS FOR OVER FOUR YEARS, THAT UNDER THIRD-PARTY BENEFICIARY LAW THE RESIDENT SHOULD BE BOUND.

AND ALTERNATIVELY --

>> I THOUGHT THE THIRD-PARTY BENEFICIARY WAS SOMETHING THAT WAS TO BE ASSERTED BY A NONPARTY TO A CONTRACT.

>> WELL, THAT'S CORRECT.

>> SO YOU'RE SAYING THE NURSING HOME CAN ASSERT THAT THIRD-PARTY BENEFICIARY?

IS THAT WHAT YOU'RE SAYING?

>> I'M NOT SURE I FOLLOW, YOUR

HONOR.

I THINK IT CAN BE -- A
THIRD-PARTY BENEFICIARY CAN BE
BOUND -- WELL, A THIRD-PARTY
BENEFICIARY IS BOUND TO A
CONTRACT TO THE SAME EXTENT THAT
THE PARTY SEEKING TO BENEFIT IS
INVOLVED.

>> WHO IS THE THIRD-PARTY
BENEFICIARY?

>> MR. MENDEZ, SR., THE
RESIDENT.

>> HE'S THE ONE THAT HAS TO
ASSERT THE THIRD-PARTY
BENEFICIARY PRINCIPLE, NOT THE
NURSING HOME.

IT DOESN'T GO BOTH WAYS, DOES
IT?

>> I THINK IT DOES GO BOTH WAYS.
AND IF THE COURT DOESN'T SEE IT
THAT WAY, MY ALTERNATIVE
ARGUMENT, AGAIN, IS THAT FOUR
YEARS THIS GENTLEMAN TOOK
ADVANTAGE OF THE BENEFITS OF
BEING AT THIS NURSING HOME AND
THE CASE LAW THAT I'VE CITED IN
THE BRIEF -- AND THERE'S A
CITATION WHICH I DON'T NORMALLY
SITE, BUT IT WAS USEFUL AND
CITED BY THE SECOND DISTRICT IN
THE YARAWSKY CASE.

ONE OF THE REASONS THAT I
INCLUDED IT, BECAUSE YOU HAVE
THE SECOND DCA IN YARAWSKY
RECOGNIZING THAT POINT BUT THEN
COMING UP WITH AN OPINION THAT
REALLY DIDN'T REFLECT WHAT THE
STATE OF THE LAW IS.

SO I'M NOT ASKING THE COURT --
I'M ASKING THE COURT TO APPLY
LONGSTANDING PRINCIPLES OR
ESTOPPEL BY ACCEPTANCE OF
BENEFITS.

>> HE HAS TO PAY FOR ANY
SERVICES THAT HE RECEIVED.

>> IN ORDER TO BE A THIRD-PARTY
BENEFICIARY?

>> NO, NO, NO, NO.

I'M SAYING BUT THE QUESTION
ISN'T THAT HE'S NOT PAYING FOR

THE SERVICES THAT HE RECEIVED
THAT HE BENEFITED FROM.
THE QUESTION HERE IS WHETHER OR
NOT THE ARBITRATION AGREEMENT
WAS SOMETHING HE ACCEPTED
INDIVIDUALLY.

>> WELL, YOUR HONOR, IF WE GET
DOWN TO THE POINT OF
INDIVIDUALLY PASS THE
THIRD-PARTY BENEFICIARY
ARGUMENT, I WOULD SAY YES.
HE ACCEPTED THIS CONTRACT AND
THE CARE AND SERVICES THAT IT
PROVIDING AND ALL OF ITS TERMS
RIGHT ALONG WITH IT.
IF THE COURT LOOKS AT THE
CONTRACT IN THIS CASE AND THE
WAY IT'S LAID OUT, IT WILL SEE
THAT HE WAS PROVIDED WITH VERY
CLEAR BENEFITS, EXTENSIVE
BENEFITS ACCORDING TO THAT
CONTRACT AND EVEN, IF I MAY WRAP
UP VERY BRIEFLY, YOUR HONOR.

>> WRAP IT UP, PLEASE.

>> EVEN IF -- WELL, HE WAS --
I'M SORRY.

HE WAS PROVIDED WITH BENEFITS
UNDER THAT CONTRACT FOR FOUR
YEARS AND CERTAINLY SHOULD BE AT
THIS POINT BOUND, SHOULD NOT BE
ABLE TO ESCAPE THE ARBITRATION
CLAUSE WHEN IT NO LONGER WORKS
TO HIS BENEFIT.

THANK YOU.

>> THANK YOU.

>> JUSTICE QUINCE, I FOUND THE
DOCUMENT.

AND THE DOCUMENT IS A --

>> COUNSEL, MICROPHONE.

>> I FOUND THE DOCUMENT YOU WERE
TALKING ABOUT.

AND IT'S AN AUTHORIZATION FOR
TREATMENT.

IT'S THE EQUIVALENT OF HIM
STATING I AM A HEALTH CARE PROXY
OR HOLD SOME OTHER AUTHORITY TO
AGREE TO TREATMENT.

AND THE CASE IS OUT OF THE THIRD
DCA DEALING WITH SITUATIONS
WHERE -- HE'S ACTUALLY MADE THIS

ARGUMENT, THAT THE HEALTH CARE PROXY, BY SIGNING THIS AGREEMENT RIGHT HERE, BINDS THE RESIDENT TO THE ENTIRE CONTRACT.

THE DCAs HAVE UNEQUIVOCALLY SAID NO.

BY SIGNING THIS, YOU'RE SAYING I HAVE THE AUTHORITY TO AGREE TO TREATMENT IF THE PATIENT CANNOT AGREE TO THAT TREATMENT.

I AM THE PROXY.

I'M THE SURROGATE.

BY SIGNING THIS AGREEMENT, HE IS NOT SAYING I HAVE THE AUTHORITY TO WAIVE A CONSTITUTIONAL RIGHT.

AND THE CASE ON THAT IS BLANKENFELD, AND I KEEP CALLING IT BLANKENSHIP BECAUSE I HAVE A CLIENT NAMED BLANKENSHIP AND IT'S LIKE HEARING A SONG FIRST THING IN THE MORNING.

IT STAYS IN YOUR HEAD ALL DAY LONG.

THE CASE IS BLANKENFELD.

IT'S FOURTH DCA.

IT'S 902 SO.2D 906.

IT'S AN EXTENSIVE OPINION DEALING WITH WHETHER OR NOT A HEALTH CARE PROXY HAS THE RIGHT TO BIND THE RESIDENT TO AN ARBITRATION AGREEMENT.

AND THE ANSWER IS NO.

BUT MOST IMPORTANTLY IT'S JUDGE FARMER'S CONCURRENCE IN THIS CASE, BECAUSE IT DEALS WITH SO MANY OF THE ISSUES WE'RE DEALING WITH HERE.

>> YOUR ARGUMENT THEN, IT SEEMS TO ME, IS FIRST OF ALL HE DIDN'T HAVE THE AUTHORITY TO ACTUALLY SIGN THE CONTRACT.

>> NO, MA'AM.

>> AND EVEN IF HE IS SOMEHOW FOUND TO BE HIS REPRESENTATIVE, HE DID NOT HAVE THE AUTHORITY TO WAIVE HIS CONSTITUTIONAL RIGHTS.

>> NO AUTHORITY WHATEVER.

>> BUT HE DOES HAVE AUTHORITY TO BRING THIS LAWSUIT.

>> I'M SORRY.

>> HE DOES HAVE AUTHORITY TO BRING THIS LAWSUIT.
HE'S ACTING ON BEHALF OF HIS FATHER IN BRINGING THIS LAWSUIT?
>> HE DID NOT HAVE ANY AUTHORITY, LEGAL AUTHORITY, TO DO ANYTHING ON BEHALF OF HIS FATHER.
>> INCLUDING THIS LAWSUIT?
>> HE DID NOT -- THEY KEEP TALKING ABOUT DURABLE POWER OF ATTORNEYS AND RIGHTS AND SO ON. HE HAD ZERO AUTHORITY. THOSE ARE THE FACTS OF THIS CASE.
>> HE'S ASKING ABOUT THIS LAWSUIT.
WHO BROUGHT THE LAWSUIT?
>> HE DID HAVE AUTHORITY TO BRING THE LAWSUIT.
I APOLOGIZE, JUDGE POLSTON.
>> HE'S THE PERSONAL REPRESENTATIVE OF HIS FATHER'S ESTATE, CORRECT?
>> HERE'S WHAT HAPPENED.
HE WAS CHECKED IN HAMPTON COURT AND THREE YEARS LATER HE THEN SIGNED A POWER OF ATTORNEY WHEN ALLOWED HIS SON TO BRING A LAWSUIT ON HIS BEHALF.
IT WASN'T A DURABLE POWER OF ATTORNEY, A GUARDIANSHIP, NOTHING.
IT SIMPLY SAYS I GIVE MY SON MY AUTHORITY TO ACT ON MY BEHALF AND HIS SON ON BEHALF OF HIS FATHER BROUGHT THE LAWSUIT FOR PUTTING HIS EYE OUT.
SUBSEQUENTLY, HE DIED OF AN UNRELATED CAUSE.
AND SO THE ESTATE IS NOW INVOLVED.
THE DEATH HAS NOTHING TO DO WITH THE CASE.
THE POWER OF ATTORNEY CAME THREE YEARS AFTER THE ADMISSION AND DOES NOT SAY YOU CAN SIGN AWAY MY CONSTITUTIONAL RIGHTS, DOES NOT SAY YOU'RE MY HEALTH CARE SURROGATE, DOES NOT SAY ANY OF

THAT.

IT SIMPLY SAYS YOU HAVE THE
RIGHT TO ACT ON MY BEHALF.
AND USING THAT HIS SON THEN
BROUGHT THE LAWSUIT, WHICH
ULTIMATELY RESULTED IN A RULING
FROM THE THIRD DCA IN THIS CASE
ABOUT THIRD-PARTY BENEFICIARY
ESTOPPEL AND THE ARBITRATION
ORDER.

NOW, I HAVE A VERY HARD TIME
WITH THE CONCEPT THAT THE
NURSING HOME -- NURSING HOMES
ARE ORGANIZED.

THEY'RE NOT RANDOM.

THEY HAVE A NATIONWIDE
ORGANIZATION WHICH CREATES FORMS
FOR THEM, THAT KEEPS TRACK OF
THE LAW AND LOBBIES FOR THEM.
THEY TRIED TO APPEAR IN THIS
CASE AS A FRIEND OF THE COURT,
AND I CHALLENGED IT, BECAUSE
THEY'RE REALLY, REALLY, REALLY
PARTISAN.

AND I CHALLENGED IT.

AND THE COURT SAID, NO, WE'RE
NOT GOING TO LET YOU IN HERE.
MY POINT IS, THOUGH, THIS IS NOT
A RANDOM, ONE OFF, GEE, THIS WAS
A MISTAKE, IT DIDN'T HAPPEN.

THEY HAVE THE FORMS.

THEY HAD THE FORMS IN PLACE.

THEY KNOW THE LAW.

THEY HELPED WRITE THE LAW.

YET THEY DON'T FOLLOW THE LAW.

FOR SOME REASON, THEY JUST CAN'T
GET THEIR PEOPLE TO FOLLOW THE
LAW.

THEY CAN'T GET THEM TO GET THE
DOCUMENTS THAT THEY NEED.

>> YOU'RE TALKING ABOUT
THIRD-PARTY BENEFICIARIES A
LITTLE BIT?

>> I'M SORRY, YOUR HONOR.

>> THIRD-PARTY BENEFICIARIES,
CAN YOU TALK ABOUT THAT A LITTLE
BIT?

>> YES, YOUR HONOR.

INSTEAD, THEY RELY UPON
ARGUMENTS.

THEY STARTED WITH PROXY
ARGUMENTS AND THEY WENT INTO
DURABLE POWER OF ATTORNEYS.
THEY LOST ON THOSE.
THEN THEY WENT TO THIRD-PARTY
BENEFICIARIES AND THAT HIT.
AND NOW THE THIRD DCA IS TALKING
ABOUT ESTOPPEL.

>> I THINK THE QUESTION IS HOW
DOES THIRD-PARTY BENEFICIARY
WORK?

IS IT FOR THE BENEFIT OF THE
THIRD PARTY, OR CAN A SIGNATORY
TO THE CONTRACT ACTUALLY ASSERT
THE THIRD-PARTY BENEFICIARY
CONCEPT?

>> THIRD-PARTY BENEFICIARY RULE
APPLIES WHERE ONE HAS ENTERED
INTO A CONTRACT FOR THE EXPRESS
BENEFIT OF THE THIRD PARTY.
I AM DOING SOMETHING EXPRESSLY
FOR YOUR BENEFIT.

AND A GOOD EXAMPLE OF THAT IS A
TRUSTEE ACTING ON BEHALF OF
SOMEBODY.

A GOOD EXAMPLE OF THAT WOULD BE
A LEGAL GUARDIAN ACTING ON
BEHALF OF SOMEBODY.

>> WELL, I MEAN, ON THIS
ARGUMENT, PRETTY CLEARLY THE
CONTRACT HERE IS FOR THE BENEFIT
OF THE RESIDENT.

I MEAN, THIS IS TO GET THEM INTO
WHERE THEY CAN GET CARE.

ISN'T THAT CORRECT?

>> THAT'S CORRECT.

THE CONTRACT SHOULD HAVE BEEN
SIGNED BY THE RESIDENT, THOUGH.

THE RESIDENT WAS AVAILABLE.

THE RESIDENT WAS THERE.

THE RESIDENT COULD HAVE SIGNED A
CONTRACT.

HAD THEY DONE SO, WE WOULDN'T BE
HERE TODAY.

>> SO IS IT YOUR POSITION THAT
AT THE TIME THAT THIS ALL TOOK
-- OF THE ADMISSION, THE
RESIDENT WAS COMPETENT.

>> THE RESIDENT WAS -- THERE WAS
ABSOLUTELY NO EVIDENCE THAT THE

RESIDENT WAS NOT COMPETENT.
AND THAT'S ONE OF THE PROBLEMS
WITH THE THIRD DCA'S OPINION.
>> SO IT'S YOUR OPINION THE
RESIDENT WAS COMPETENT.
>> ACTUALLY, I HAVEN'T SEEN A
POSITION ON IT.
>> I THINK YOU HAVE A FLEXIBLE
POSITION.
>> WELL --
>> THAT'S A RATHER CONFUSING
POSITION, BECAUSE THE THIRD DCA
STARTED ITS OPENING PARAGRAPH
SAYING ON THE DAY THE FATHER WAS
ADMITTED THAT THE DOCTOR
EMPLOYED BY THE FACILITY
DETERMINED THE FATHER LACKED THE
CAPACITY TO GIVE INFORMED
CONSENT OR MAKE MEDICAL
DECISIONS.
SO THE THIRD DCA SAYS IN HIS
OPINION THAT HE LACKED CAPACITY.
IS THAT JUST WRONG?
>> THAT'S WRONG, YOUR HONOR.
BASED ON ARGUMENT OF COUNSEL,
THEY DECIDED THAT HE LACKED
CAPACITY.
WHAT WE HAD IS THIS.
THEY CAME IN AND THEY ARGUED TO
THE TRIAL JUDGE THAT JUAN
MENDEZ, JR. WAS THE HEALTH CARE
PROXY UNDER THE DOCUMENT SIGNED
ON PAGE 9, WHICH JUSTICE QUINCE
TALKED ABOUT.
AND BECAUSE HE WAS A PROXY, THEY
TOLD THE TRIAL COURT, WE WIN,
THE ARBITRATION AGREEMENT IS
GOOD BECAUSE WHEN YOU SIGN THIS
PROXY, HE AUTHORIZED THE
INCLUSION OF THE ARBITRATION
AGREEMENT.
THEY THEN AT THE HEARING, AT THE
HEARING, SHIFTED GEARS.
THEY REALIZED IT WASN'T GOING TO
WORK BECAUSE OF THE BLANKENFELD
CASE.
WE ARGUED THE BLANKENFELD CASE.
THEY SHIFTED GEARS, AND AT THAT
HEARING THEY SPRUNG AN
UNNOTARIZED, UNAUTHENTICATED

DOCUMENT ON THEIR LETTERHEAD
SIGNED BY A RESIDENT PHYSICIAN
THAT SAYS SHE, NOT HE, SHE WAS
INCOMPETENT.
THE DOCTOR DIDN'T EVEN KNOW WHO
HE WAS DEALING WITH.
>> LISTEN.
>> AND THAT'S HOW THEY ARGUED
COMPETENCY.
>> THE CHIEF HAS BEEN VERY
FLEXIBLE WITH THE TIME.
>> VERY FLEXIBLE.
>> BUT EVEN HE HAS HIS LIMITS.
>> THEY'RE MUCH MORE FLEXIBLE
THAN I AM ON THE ISSUE.
I DON'T HAVE ANY EVIDENCE ONE
WAY OR ANOTHER.
IN A WORST CASE SCENARIO, THE
THIRD DCA SHOULD HAVE SENT THIS
BACK FOR AN EVIDENTIARY --
>> I THINK YOU'RE DONE.
>> VERY FLEXIBLE IS TOO WEAK OF
A WORD.
YOU'RE DONE.
THANK YOU.
THANK YOU FOR YOUR ARGUMENT.
>> I URGE THE COURT TO READ THE
BLANKENSHIP.
I URGE THE COURT TO GRANT THE
PETITION, QUASH THE ORDER AND
REMAND.
>> THANK YOU, SIR.
THANK YOU FOR YOUR ARGUMENTS.
>> I SAID BLANKENSHIP.
BLANKENFELD.