

Nursing Homes and Arbitration Provisions

Nursing homes are routinely adding provisions to their admission papers that include a requirement that any dispute between the resident and the nursing home be submitted to mandatory arbitration. These provisions often favor the nursing home because litigants in arbitration do not have the same ability to get information from the other side as they would in a court case. In addition, an arbitrator may not award as much in losses as would a jury.

If a resident is injured or dies as a result of the negligence of a nursing home's employee, the resident or family would normally want to file a lawsuit to hold the nursing home accountable. If the resident signed an admission document that included mandatory arbitration, the nursing home will attempt to get the case dismissed and require the resident to proceed under arbitration.

Courts have reached different results about the enforceability of the arbitration provision. Some courts have enforced the provision, finding that arbitration is favored over jury trials. Other courts have struck down the provision if two conditions are present: (1) the nursing home had a far superior bargaining position than the resident and (2) the arbitration provisions unfairly favored the nursing home (e.g., losing party required to pay other side's attorney fees, nursing home could sue in courts for its bills against the resident).

In a recent decision, the Ohio Supreme Court refused to invalidate an arbitration agreement between a 95-year-old resident and the nursing home. The agreement took away the resident's right to a jury trial, attorney fees, and punitive damages. However, the court indicated that under different circumstances, the arbitration agreement should be struck down.

In any case in which a resident is injured in a nursing home, a competent attorney in this area should review the admission agreement. If there is a mandatory arbitration provision, the attorney should immediately determine whether the family should seek to invalidate the provision. At Miraldi & Barrett, we have handled many nursing home cases involving injuries and abuse to the residents and are familiar with all of the issues that arise in these cases.

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FAMILY EXCLUSION LEAVES OHIO FAMILIES VULNERABLE

One of the reasons Ohio residents purchase automobile liability insurance is to protect their families when they have been involved in a serious automobile crash. However, many insurance companies include an exclusion that takes away coverage when one family member negligently causes an accident and other family-member passengers are injured.

For example, assume that a family of four (a husband, wife, and two children) is driving together to a movie. The husband is driving the vehicle, loses control of the vehicle on a snowy road, and crashes the car into a telephone pole. The wife and two children suffer a variety of fractured bones as a result and incur medical expenses of \$75,000. Under this scenario, if the wife and two children filed a claim against the family's automobile liability insurer, the claim likely would not be covered. Many insurance companies include a provision that says that the insurance does not apply when the injured people are family members who reside in the same household as the driver. If, on the other hand, this same crash took place, but this time the driver was transporting three of his friends to the movies, all of the passengers would be entitled to bring claims against the driver that would be covered under the driver's insurance policy.

Not all insurance companies have this "family exclusion." It is important for consumers to find out if their auto policies have this loophole. If it does have this escape provision, then it would make sense to change one's insurance to a company that does honor this type of claim.

Having adequate insurance is an important way for people to be responsible and protect themselves and others when their negligence causes serious injury. The Ohio Legislature needs to step up and address this issue and forbid insurance companies from eliminating coverage between family members.

It is important for you as the consumer to contact your legislator in order to close this serious gap in coverage that leaves all families vulnerable.

Our firm has handled many insurance coverage disputes and can advise you if your insurance company tells you that there is no coverage for your loss.



Experience Doesn't Cost More!

SECRET COURT AGREEMENTS

Negligent corporations that produce dangerous and hazardous products use court-secrecy agreements to avoid accountability and hide potential public-safety issues.

Victims of dangerous products are often forced to sign court-secrecy agreements to settle product liability cases. These agreements have hidden the ongoing dangers of prescription drugs, hazardous toys, deadly tires, and collapsing baby cribs.

Dangerous tires

Upon learning of the tread-separation dangers of Firestone tires, Johnny Bradley changed his truck's tires to the Cooper brand. While being driven cross-country to a new military assignment, Bradley's vehicle left the road and rolled over four times when a Cooper tire tread separated. Bradley's wife, Timica, who was driving, was killed instantly, but the family's baby survived. While recovering from injuries, Bradley was unable to attend Timica's funeral. In the course of litigating Bradley's case, his attorney uncovered documented evidence of Cooper tire-design defects. These documents, which could have saved Timica's life, were kept confidential through protective orders in more than 200 previous lawsuits against Cooper. Before the end of the federal trial, Cooper Tires settled with Bradley but demanded that almost all litigation documents be kept confidential under a broad protective order.

How injuries can affect us deeply

In representing people who have suffered physical injuries or psychological harm, a key practice goal is to employ our civil justice system to "make them whole again." That may seem hard to understand, until you think about how your own life might change if you were to be injured.

Would you be the same parent, for instance, if you were disabled in an auto accident? Probably not, because your condition might limit your

ability to drive your children to school, or wash their clothes, or even hug them.

Would you be the same physical person after a slip-and-fall? Perhaps not, if your spinal injury prevented you from working out at the gym or even walking around the block.

How about your ambitions and dreams? How might loss of independence, for example, increase your financial worries, or darken your normally optimistic outlook that things always work out for the best?

Our legal system provides justice to those injured by the misconduct of others and deters future misconduct by holding wrongdoers accountable. Our civil justice system makes a difference by making us feel "whole again."

Emergency rooms



Most patients receive prompt and effective medical diagnoses and care in our nation's emergency rooms; however, there are concerns. The American College of Emergency Physicians reports that treatment delays may occur because of...

- triage, treating the most serious cases in priority order;
- keeping a patient in an emergency area until a hospital bed becomes available;
- a shortage of on-call physicians;
- local large-scale epidemics or disasters.

Motorcycle trauma

A motorcyclist who was in a serious accident was airlifted to a medical center, where he began vomiting heavily. He died in the emergency room after physicians delayed ordering nurses to drain several liters of fluid from his stomach. His family's attorney demonstrated that the patient died because physicians failed to resolve a fatal stomach-fluid buildup in a timely manner. A jury granted the plaintiff's family a significant award for their loss.



Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Nautilus Inc.** has recalled 78,000 Bowflex® Ultimate 2 Home Gyms with horizontal seat rails that, when not manually latched, can fall unexpectedly and injure users or bystanders.
- ✓ **Old Navy, LLC**, asked buyers to return 35,500 (in the United States) and 5,400 (in Canada) Stuffed Animal and Creature Toys that have two button eyes that can detach and choke young children.
- ✓ **Dorel Juvenile Group USA** recalled 100,000 Safety 1st SmartLight Stair Gates. Hinges holding stair gates in place can break and pose a fall hazard to children if the gate is placed near stairs.
- ✓ **Intermatic Inc.** asks consumers to return 200,000 Intermatic DT17 Heavy Duty Digital Timers that have faulty ground connections, which can give electrical shocks to users.
- ✓ **Nordica USA** recalled 4,500 pairs of XBi ALU Skis. Binding plates can crack or break, causing injuries to skiers.

“What’s my case worth?”

As you can probably guess, no two personal injury cases are alike. Attorneys can’t respond to “What’s my case worth?” until they do a lot of case homework. Here are some factors we weigh:

1. Nature of injuries
2. Injury treatment needs
3. Treatment cost and amount already paid
4. Future medical treatment costs
5. Types of treatment, from surgery to rehabilitation
6. Where the suit will go to court
7. If you were partially at fault
8. Your prognosis
9. Preexisting medical conditions
10. Wage, benefit, and vacation losses
11. Future wage-earning limitations
12. Third-party insurance coverages
13. Emotional- and mental-stress value
14. Loss of spousal consortium
15. Property-damage deductibles
16. Similar verdicts in local courts
17. Defendant’s insurer
18. Judge assigned to case
19. Defendant’s counsel

Answers to these questions help build mutual trust between a client and attorney. With mutual trust and credibility, we can strive to earn injury victims fair outcomes.

Toxic-injury questions and answers

Q: What’s a toxic injury?

A: An individual is said to suffer a toxic injury if his or her body functions have been disturbed by exposure to dangerous substances, devices, or energy forms.

Q: Dangerous exposure? To what kinds of things?

A: There are many, including asbestos, chemicals, cosmetics, electromagnetic energy, hazardous waste, medical devices and products, pesticides, pharmaceuticals, radiation, and tobacco.

Q: What are toxic-injury symptoms?

A: Warning signs are hard to narrow: mild cold or flu symptoms; unusual skin problems; alarming tight-chest sensations and difficulty breathing; dizziness; convulsions; coma; and even death.

Q: Where do these toxins come from?

A: Just about everywhere. From air and water in the environment, building materials, cosmetics, cleaning products, food, fuels, landfills, manufactured materials, pharmaceuticals, textiles, and many, many others.

Q: What should someone do if he or she suspects toxic injury?

A: Consult an attorney experienced in investigating causes and recovering compensation.



Miraldi & Barrett Co., L.P.A.
Personal Injury Law
6061 South Broadway
Lorain, OH 44053

Miraldi & Barrett, Co.
ATTORNEYS AT LAW

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Miraldi & Barrett Supports Local Softball Team

This summer, Miraldi & Barrett sponsored a local softball team. The Lorain Girls of Summer Softball League is made up of young players, ages 5-6. The league focuses on building sportsmanship and confidence in players. With their talent and dedication, the girls' skills improved with every game.

Miraldi & Barrett has been a sponsor for four years. "We're glad to support local, young talent in our community," says Dave Miraldi.

This year's team played 10 games of 6 innings. But the girls know that it's more than just about winning, Miraldi explained. "Improving and playing your best" is a lesson they feel is vital to teach the young players. Miraldi also added that "having fun" was actually more important than anything else.



Miraldi & Barrett, Co.
ATTORNEYS AT LAW

Compensation for Injury or No Attorney Fee or Cost
6061 South Broadway, Lorain, Ohio 44053
440-233-1100 or 800-589-3023

Notice: We will advance expenses for our clients in most cases. Clients do not have to repay expenses unless there is a successful outcome.