



# Franks v. Bowers, 134 S.Ct. 683 (2013)

## 116 So.3d 1240 (Fla. 2013)

Topics Covered: Arbitration, Professional Liability

### **Outcome: Unfavorable**

#### **Issue**

The issue in this case was whether a contract between a surgery practice and its patient was valid if the contract required arbitration of disputes concerning the medical services provided and limited the non-economic damages the patient could potentially recover in the event of malpractice.

#### **AMA Interest**

The AMA believes physicians and patients should be free to agree to pre-dispute binding arbitration for non-emergency medical treatment.

#### **Case Summary**

Joseph Franks sought surgical treatment from Dr. Gary J. Bowers and Dr. Bowers' employer, North Florida Surgeons, P.A. Mr. Franks was asked to sign a four page document entitled "Financial Agreement," and he did. The Financial Agreement provided, inter alia, that (a) any disputes between the parties would be resolved by arbitration, and (b) any non-economic damages arising from medical negligence would be capped at \$250,000.

Four months after the signing of the Financial Agreement, Dr. Bowers performed the surgery. Mr. Franks was then discharged to his home. Two days later, he experienced pain and went to a hospital emergency room. A CT scan revealed a large retroperitoneal hematoma at the operative site due to the external iliac vein having been lacerated during the surgery. Two weeks later, he died.

Donna Franks, Mr. Franks' widow, sued for wrongful death, alleging medical malpractice. Based on the Financial Agreement, the defendants moved to compel arbitration. Their motion was granted. Mrs. Franks appealed to the Florida First District Court of Appeal, contending the Financial Agreement was contrary to public policy and was unconscionable. The District Court of Appeal disagreed with Mrs. Franks and affirmed the trial court. Mrs. Franks then appealed to the Florida Supreme Court.

The Florida Supreme Court noted that the Florida statutes provide for arbitration of medical malpractice disputes on agreement of the parties and for limitation of noneconomic damages (either under arbitration or in a court of law), but the Financial Agreement did not exactly track the remedies available under Florida law. According to the Florida Supreme Court, the Financial Agreement contravened the legislative scheme that was to apply to medical

malpractice claims and was therefore invalid. Furthermore, the court found the arbitration provision and the limitation of damages provisions were not severable, so the court concluded the Financial Agreement had to be voided in its entirety. The court also found that neither the Federal Arbitration Act nor a parallel Florida statute, the Florida Arbitration Code, required arbitration. The court specifically declined to address whether the Financial Agreement was unconscionable. Two Florida Supreme Court justices dissented.

The defendants petitioned the United States Supreme Court for *certiorari*, but certiorari was denied on December 2, 2013

### **Litigation Center Involvement**

The Litigation Center offered to contribute toward the cost of the *certiorari* petition.