SUPREME COURT OF ALABAMA

# American Family Life Assurance Co. of Columbus v. Parker

92 So. 3d 58 (Ala. 2012) · No. 1100227; 1100282 · Decided March 16, 2012

## SUMMARY

The Alabama Supreme Court reviewed consolidated appeals from the denial of motions to compel arbitration in an insurance dispute. The court held that the evidence established a valid arbitration agreement incorporated into the 2009 insurance policy, that the agreement covered Parker's claims concerning the earlier policy and related conduct, and that the Federal Arbitration Act applied. The court reversed and remanded with instructions to grant the motions to compel arbitration.

## CASE DETAILS

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| COURT | Supreme Court of Alabama |
| WRITING FOR THE COURT | Parker, Justice; Malone, C.J.; Parker, J.; Stuart, J.; Shaw, J.; Wise, J. |
| JURISDICTION | Alabama |
| DECIDED | March 16, 2012 |
| DOCKET | 1100227; 1100282 |
| DISPOSITION | reversed_and_remanded |
| PROCEDURAL POSTURE | Aflac and Hunter separately appealed the Franklin Circuit Court's denial of their motions to compel arbitration. The appeals were consolidated. |
| STANDARD OF REVIEW | De novo review applies to an order granting or denying a motion to compel arbitration. The motion is analogous to a motion for summary judgment: the party seeking arbitration must prove the existence of a contract containing an arbitration agreement and that the transaction affects interstate commerce; the burden then shifts to the nonmovant to present evidence that the agreement is invalid or does not apply. |
| PRECEDENTIAL VALUE | Published Alabama Supreme Court opinion |
| PARTIES | American Family Life Assurance Company of Columbus, Marilyn Phillips Hunter v. Richard L. Parker |

## TOPICS

arbitration · insurance coverage · insurance bad faith · appellate procedure · civil procedure

## PRACTICE AREAS

arbitration | insurance | contracts | civil procedure | appellate procedure

## QUESTIONS PRESENTED

1. Whether Aflac and Hunter proved the existence of a contract containing an arbitration agreement despite the absence of an Aflac representative's signature on the arbitration agreement itself.
2. Whether the arbitration agreement incorporated into the 2009 policy applied broadly enough to encompass Parker's contract, bad-faith, fraud, misrepresentation, deceit, and fraudulent-suppression claims.
3. Whether the circuit court erred by denying the motions to compel arbitration after the appellants established an arbitration agreement and interstate commerce and Parker presented no contrary evidence.

## HOLDINGS

1. Aflac and Hunter met their burden of proving the existence of a contract calling for arbitration. The 2009 policy incorporated the arbitration agreement, and the evidence showed that Parker signed the agreement, Aflac accepted premiums, and Aflac's officers signed the policy.
2. The arbitration agreement was unambiguous and broad enough to require arbitration of Parker's claims against Aflac and Hunter.
3. The circuit court erred by denying the motions to compel arbitration. The judgment was reversed and the case was remanded with instructions to grant the motions.

## KEY QUOTATIONS

> *"Unless required by a statute to be in writing, a contract does not have to be signed to be enforceable, so long as it is accepted and acted upon."* (67)

> *"Therefore, we reverse the circuit court's judgment denying Aflac's and Hunter's motions to compel arbitration, and we remand the case to the circuit court and direct it to grant those motions."* (68)

## FACTUAL BACKGROUND

Parker obtained a cancer-indemnity policy from Aflac in 1990 and later converted or replaced it with policies issued in 1996 and 2009. The 2009 policy incorporated a written arbitration agreement signed by Parker, and Aflac accepted premiums and issued a policy signed by its president and secretary. Parker sued over Aflac's refusal to pay a progressive payout benefit allegedly accruing under the 1990 policy, asserting claims against Aflac and the selling agent Hunter.

## PROCEDURAL HISTORY

Parker sued Aflac for bad-faith failure to pay benefits allegedly due under a 1990 cancer-indemnity policy and asserted related fraud-based claims. He later added Hunter, the alleged selling agent, as a defendant. Aflac and Hunter moved to compel arbitration based on an arbitration agreement incorporated into a 2009 policy; the circuit court denied both motions, prompting the consolidated appeals.

## DISPOSITION

reversed_and_remanded

## REMAND INSTRUCTIONS

The Franklin Circuit Court was directed to grant Aflac's and Hunter's motions to compel arbitration.

## CASES CITED

- First American Title Insurance Corp. v. Silvernell, 744 So. 2d 883, 886 (Ala. 1999)
- Crimson Industries, Inc. v. Kirkland, 736 So. 2d 597, 600 (Ala. 1999)
- Patrick Home Center, Inc. v. Karr, 730 So. 2d 1171 (Ala. 1999)
- United Wisconsin Life Insurance Co. v. Tankersley, 880 So. 2d 385, 389 (Ala. 2003)
- TranSouth Financial Corp. v. Bell, 739 So. 2d 1110, 1114 (Ala. 1999)
- Fleetwood Enterprises, Inc. v. Bruno, 784 So. 2d 277, 280 (Ala. 2000)
- Jim Burke Automotive, Inc. v. Beavers, 674 So. 2d 1260, 1265 n. 1 (Ala. 1995)
- Vann v. First Community Credit Corp., 834 So. 2d 751, 753 (Ala. 2002)
- Cartwright v. Maitland, 30 So. 3d 405, 408-09 (Ala. 2009)
- Green Tree Financial Corp. of Alabama v. Vintson, 753 So. 2d 497, 501-02 (Ala. 1999)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983)
- University of South Alabama v. Progressive Insurance Co., 904 So. 2d 1242, 1247-48 (Ala. 2004)
- Ex parte Showers, 812 So. 2d 277, 281 (Ala. 2001)
- Spradlin v. Spradlin, 601 So. 2d 76, 79 (Ala. 1992)
- Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Kilgore, 751 So. 2d 8, 11 (Ala. 1999)
- Allied-Bruce Terminix Cos. v. Dobson, 684 So. 2d 102, 107, 110 (Ala. 1995)
- Capital Investment Group, Inc. v. Woodson, 694 So. 2d 1268 (Ala. 1997)
- Lawler Mobile Homes, Inc. v. Tarver, 492 So. 2d 297, 304 (Ala. 1986)
- Ex parte Pointer, 714 So. 2d 971 (Ala. 1997)
- Ex parte Rush, 730 So. 2d 1175 (Ala. 1999)
- Anderson Brothers Chrysler Plymouth Dodge, Inc. v. Hadley, 720 So. 2d 895 (Ala. 1998)
- Anselmo Meat Co. v. Riley, 533 So. 2d 552 (Ala. 1988)