

# Products Liability Case of the Month - May 2003

May 13, 2003

The Fourth District Court of Appeal (West Palm Beach), in a case of first impression in Florida, held that a mother could not bind a child to an agreement to arbitrate potential personal injury claims. Eleven year-old Mark Shea and his mother were in Botswana on an African safari. While Shea slept alone at a campsite, he was dragged and mauled by hyenas. Prior to the trip, Shea's mother signed an agreement to arbitrate all future claims against Africa Adventure, the operator of the safari, in Fort Lauderdale, Florida (Broward County). More important, the mother also signed the agreement on behalf of her son. Shea's father, who was divorced from Shea's mother, brought a wrongful death suit as personal representative of his son's estate against Africa Adventure in Broward County. Africa Adventure, citing the arbitration agreement, moved to stay the father's cause of action and compel arbitration. The lower court agreed and ruled that Africa Adventure was entitled to arbitration. The Fourth DCA reversed. To begin, the Fourth DCA posited that the "issue of whether a parent can bind a child to an agreement to arbitrate is one of first impression in Florida." The court further declared that the "question of whether parents can contract on behalf of their children is determined on public policy grounds," and cited various examples of Florida's public policy favoring protection of minors. Among these examples were statutory law prohibiting a minor child's natural guardian from binding her to a settlement agreement as well as case law precluding a parent in a child custody dispute from making private agreements without court approval. Though acknowledging parents have authority to contract for their children when it comes to medical care, the court did note a compelling reason overriding the public policy in such instances: Since minors can disaffirm their own contracts for medical services, medical groups would likely not contract directly with children. In contrast, the court did not find that commercial travel provided an equally compelling reason and held that absent circumstances supported by public policy, parents may not "carte blanche, waive the litigation rights of their children." Arbitration, therefore, was not required. **Comments:** While the opinion stopped short of providing a working list of circumstances in which parents may not bind their children contractually, *Shea* does provide a framework to attack contracts signed by parents on their children's behalf. The Fourth DCA's emphasis on the public policy favoring protection of minors makes it clear that in Florida, the bar is set very high. Circumstances where a departure from the general public policy is permitted, according to the court, are waivers to obtain medical care or insurance or to participate in school-supported activities.

Commercial travel opportunities, on the other hand, are not. Based on *Shea*, it is within these parameters where the future case law is likely to develop.

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