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VIA EMAIL

Eugene Rosov, President
Pediatricians Insurance RRG of America (PIRRGA)
634 Bird Road
Coral Gables, FL 33146

Dear Mr. Rosov:

I am providing you with this letter at your request to outline a brief history of the federal arbitration act, and to address current issues and recent developments in the use of arbitration in the arena of medical malpractice disputes.

➢····· History of the Federal Arbitration Act and its relevance and importance.

The use of arbitration agreements in employment and consumer contracts has grown steadily as employers and businesses have sought to avoid the judicial system for resolving disputes. It is believed that at least eight percent of American workers are now bound by arbitration agreements. Since the early 1990s, an increasing number of credit card issuers have added arbitration clauses to their customer agreements. Although arbitration is often perceived as a faster and less costly alternative to litigation, some consumer advocates contend that mandatory arbitration agreements are one-sided measures that force employees and consumers to give up certain advantages, including access to jury trials and the ability to maintain class actions lawsuits.

Congress enacted the Federal Arbitration Act ("FAA") to ensure the validity and enforcement of arbitration agreements in any "maritime transaction or a contract evidencing a transaction involving commerce." In general, the FAA evidences a national policy favoring arbitration. In its 2000-2001 term, the U.S. Supreme Court issued two decisions involving the FAA. In both cases, the Court upheld the validity of the arbitration agreements that were being challenged. See Congressional Research Service - Library of Congress - "The Federal Arbitration Act: Background and Recent Developments" Updated June 17, 2002; Jon O. Shimabukuro, Legislative Attorney, American Law Division.

Section 2 of the FAA provides that:

> "a written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy

> thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

By enacting Section 2, Congress sought to place arbitration agreements "upon the same footing as other contracts, where [they] belong." *Southland*, 465 U.S. at 16, 104 S. Ct. at 861, 79 L. Ed. 2d at 15 (quoting H.R. Rep. No. 96, 68th Cong., 1st Sess., 1 (1924)). See also William G. Phelps, Annotation, *Preemption by Federal Arbitration Act* (*9 USCS §§ 1 et seq.) of State Laws Prohibiting or Restricting Formation or Enforcement of Arbitration Agreements*, 108 A.L.R. Fed. 179, §§ 2-5, at 187-201 (1992). Prior to 1925, American courts viewed arbitration with judicial hostility. It is believed that this hostility flowed from a similar hostility displayed by English courts. Because English judges were paid fees based on the number of cases they decided, arbitration infringed on their livelihood. English courts were also unwilling generally to surrender their jurisdiction over various disputes. As industrialization prompted an increased number of business disputes, the hostility toward arbitration subsided. The Court's decision in *Red Cross Line v. Atlantic Fruit Company* opened the door for Congress to pass legislation that recognized the validity of arbitration agreements.

President Coolidge signed the United States Arbitration Law (commonly referred to as the Federal Arbitration Act) on February 12, 1925. The law "declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). While Congress' primary motivation for drafting the FAA reflected its interest in recognizing arbitration agreements as being just as valid as other contract provisions, it also understood the potential benefits that would be provided by enactment of the FAA: "It is practically appropriate that the action should be taken at this time when there is so much agitation against the costliness and delays of litigation. These matters can be largely eliminated by agreements for arbitration, if arbitration agreements are made valid and enforceable," wrote the Congressional drafter of the FAA.

The Revised Uniform Arbitration Act updates the original Uniform Arbitration Act to reflect the modern practice of arbitration and changes in the law. These issues include who decides the arbitrability of a dispute, arbitrator disclosures, what remedies an arbitrator can award, and how parties initiate an arbitration. The National Council of Commissioners on Uniform State Laws approved and recommended the RUAA for enactment at its meeting in August, 2000. The Revised Uniform Arbitration Act was approved by the ABA House of Delegates in February 2001. It has been accepted in its general form, substantially, by most states. Although it has been rare for states to expand upon the FAA with additional restrictive languages, a few states have attempted to do so. Where such language has been challenged, the state supreme courts, and the federal appellate courts, have consistently struck down language which has attempted to restrict the broad reach of the FAA. See Appendix "A" for details.

➢ <u>Issue: Why arbitration under the FAA can be adopted at a state level and not overturned.</u>

The FAA has been adopted by most states, and largely in the same format, and with the same broad language, as originally proposed by the U.S. Congress and as amended by the RUAA in 2002. As part of this response, we have appended the status of arbitration in the 50 states. As an overall

commentary, we quote herewith constitutional attorney Douglas H. Yarn, who wrote the definitive text on the FAA within Georgia law, with a commentary applicable to all other states (Alternative Dispute Resolution: Prac. & Proc. in Ga., (2d. ed. 1997)). He concludes that "Few transactions escape the reach of the FAA, leaving very few instances where the anti-arbitration law or policy of a particular state can be used to restrict enforcement of an arbitral agreement" because "the barest indicia of interstate commerce will invoke coverage of the FAA."

Mr. Yarn derives this broad statement from a series of United States Supreme Court (USSC) decisions amplifying the reach and depth of the federal Arbitration Act. Some of these USSC key cases are detailed in Appendix "B."

Specifically in the area of insurance, a key state ruling by the Iowa Supreme Court (ISC) in April, 2002 is especially noteworthy. First, it clearly indicates the method and manner by which the FAA "trumps" or preempts any state statutory language which conflicts with or otherwise impinges upon the broad reach of the FAA. Secondly, the ISC ruling expands upon the meaning of "commerce" in the broadest possible language. Third, it goes on to indicate how insurance *in particular* is subject to the broad reach of the Federal Arbitration Act, and includes a powerful federally derived rationale for including insurance within the purview of the FAA:

> "The FAA does not exclude adhesion contracts. The Iowa statute, by excluding adhesion contracts, is in conflict with the FAA. Thus, if the federal act is applicable, it preempts the Iowa statute by operation of the Supremacy Clause. Heaberlin [the plaintiff's attorney] argues that the federal act is not applicable here because this contract is not a "transaction involving commerce." That is the key issue in this case.
>
> The Iowa Supreme Court continued as follows, quoting the U.S.S.C:
>
> "Contrary to the plaintiff's argument, a substantial weight of authority holds that insurance transactions do involve interstate commerce. Prior to 1944, a long line of cases had held that insurance policies do not involve interstate commerce. In 1944 the Supreme Court traced the history of the relationship between interstate commerce and the insurance industry …concluding with a recognition, based on the economic realities of the insurance industry, that the insurance industry inextricably involves interstate commerce. …The USSC Court has held that Congress can regulate traffic though it consists of intangibles. In reaching its conclusion that generally the insurance business is a part of interstate commerce, the USSC noted the pervasiveness of the insurance industry:"
>
> > *The modern insurance business holds a commanding position in the trade and commerce of our Nation. Built upon the sale of contracts of indemnity, it has become one of the largest and most important branches of commerce. Its total assets exceed $37,000,000,000, or the approximate equivalent of the value of all farm lands and buildings in the United States. Its annual premium receipts exceed $6,000,000,000, more than the average annual revenue receipts of the United States Government during the last decade. Included in the labor force of insurance are 524,000 experienced workers, almost as many as seek their livings in coal mining or automobile manufacturing. Perhaps no modern commercial enterprise directly affects so many persons in all walks of life as does the insurance*

business. Insurance touches the home, the family, and the occupation or the business of almost every person in the United States.

This business is not separated into 48 distinct territorial compartments which function in isolation from each other. Interrelationship, interdependence, and integration of activities in all the states in which they operate are practical aspects of the insurance companies' methods of doing business. A large share of the insurance business is concentrated in a comparatively few companies located, for the most part, in the financial centers of the East. Premiums collected from policyholders in every part of the United States flow into these companies for investment. As policies become payable, checks and drafts flow back to the many states where the policyholders reside. The result is a continuous and indivisible stream of intercourse among the states composed of collections of premiums, payments of policy obligations, and the countless documents and communications which are essential to the negotiation and execution of policy contracts. . . . The decisions which that company makes at its home office—the risks it insures, the premiums it charges, the investments it makes, the losses it pays—concern not just the people of the state where the home office happens to be located. They concern people living far beyond the boundaries of that state."

We therefore would point out that insurance generally is interstate commerce, and the importance of the FAA's extension into the insurance business, despite specific exclusions relating to McCarran-Ferguson, are important for national business interests.

➢ Issue: Are there any precedent set to date?

The precedents are listed in Appendix "A" to this letter.

➢ Issue: The California experience. Who uses it and what is their experience, anecdotally and statistically?

Statistical information on the use of binding arbitration in California is difficult to obtain, and where obtainable is truncated and difficult to analyze. However, a few key items which could be held to be relevant:

- Kaiser-Permanente and CAP-MPT have been using binding arbitration continuously for over 20 years. Their mere continuation of promoting it amongst their physician insureds is a key indication of its value, at least in California.

- Similarly, California Pacific has been using binding arbitration in northern California for over 30 years. Their actuarially determined rates are approximately 50% the rates of other companies in the area, especially for ob/gyns. Of their 300 insureds, some 120 are ob/gyns practicing in the greater San Francisco area.

In addition to these three institutions, several others use binding arbitration routinely. They include Duke Health Systems, Nemours Children's Hospitals, Pediatricians Insurance RRG of America (PIRRGA), and Beverly Healthcare. PIRRGA is well-known to the founders of OGRRGA. Of its 117

physicians, nearly 100 use the company's PPAA (Patient Physician Arbitration Agreement), and over 35,000 agreements have been signed. PIRRGA estimates that by July 2006 over 98% of their insured physicians' patients will have executed PPAAs. The PPAA is in essentially the same form as the proposed PPAA for OGRRGA.

Medical Development & Management Company, Inc., (MDMC), which administers the PPAA program for PIRRGA, is exceptionally well-versed in how to effectively obtain patient signatures on its PPAAs. The program involves office waiting room and examination room plaques, specifically worded presentations by office and nursing staff, key "quick objection" answers, and the maintenance of a 24-hour toll-free "hotline." The methodology used to obtain full patient participation in the PPAA program will be administered by MDMC on behalf of OGRRGA insureds.

➢ Issue: How do you propose to amend the arbitration provision by state to allow for local laws?

Where state provisions could potentially create an issue – for example, the two-year Illinois "sunset" provision and the ability for 45-day rescission – OGRRGA's Illinois binding arbitration agreements (PPAAs) include a waiver of these two statutes by the signers to the agreement. Those few states which have persisted in maintaining statutory conflict with the FAA have waivers, within the OGRRGA PPAA, to abnegate state law.

Further, it should be noted that despite these waivers, the hegemony of the federal Arbitration Act cannot be impugned by state law, and remains the governing law. OGRRGA's PPAA specifically references the FAA, and in relying upon the broad constitutional reach of the FAA, and its further implementation throughout the 50 states through diverse and recent USSC rulings, state laws restricting any of the provisions of the PPAA promulgated by OGRRGA are not viable. To quote attorney Michael J. Brady, senior appellate attorney at the firm of Ropers, Majeski et al. of Redwood, California which company has administered the Kaiser-Permanente binding arbitration program for over 20 years (private written communication to Eugene Rosov, President of OGRRGA, November 2006):

> *America does not have a "national law" like England or France. Instead we have 50 separate jurisdictions, with state law largely determining the validity of such matters as contractual mandatory arbitration. This means that the law of each individual state in which you are operating must be consulted with respect to the validity of the binding arbitration agreement.*
>
> *Overlying the law of the 50 individual states are decisions from the United States Supreme Court construing a federal statute (which is supreme over state law) called the Federal Arbitration Act. Since the year 2000, the U.S. Supreme Court has decided three cases dealing with the scope of the Federal Arbitration Act (FAA). The essence of these cases says this: the Federal Arbitration Act is supreme; if private contracts (between companies like yours and the doctors) are entered into within the context of interstate commerce (true with all your contracts) and especially if these contracts recite that they are to be governed by the Federal Arbitration Act (true with your company), then the private agreement between the company and the physicians is to be respected and enforced and all provisions of the agreement are to be liberally construed in favor of mandatory arbitration. The Supreme Court so held because this was the intent of the 1913 Federal Arbitration Act.*
>
> *The significance of these Supreme Court decisions is this: various states in the*

United States have been notoriously hostile to mandatory arbitration (or arbitration in general). They sometimes hold that the agreements are unconscionable. The effect of the U.S. Supreme Court decisions means that it will be <u>*very difficult*</u> *for a state court to find that a private arbitration contract is unconscionable…*

Bottom line: there is nothing inherently illegal about binding arbitration of disputes between your company and the subscriber. And the U.S. Supreme Court decisions make it much more likely that binding arbitration will be upheld as the proper procedure.

- <u>Issue: Can a parent sign for a child – especially unborn, as we are covering OB</u>?

Yes. A parent can sign for a child. There are several legal precedents.

One legal precedent is *McKinstry v. Valley Obstetrics-Gynecology Clinic, P.C.***,** 428 Mich. 167, 405 N.W.2d 88 (Mich. 1987). McKinstry was admitted to the hospital with pregnancy complications. Upon admission, she signed two arbitration agreements, one for herself, and one for "baby or babies McKinstry." During the delivery, her daughter suffered a shoulder and arm injury. After determining the arbitration agreements complied with the Michigan Malpractice Arbitration Act (MMAA), the Court addressed whether a parent could bind her child to arbitration where the agreement was signed while the child was in utero. The MMAA specifically provides that a minor child is bound by a written agreement to arbitrate disputes executed on his behalf by a parent or legal guardian. Finding the legislature did not distinguish between a minor child born after parental consent with that of a minor child born prior to parental consent, the court reasoned that neither a fetus nor a minor child has the capacity to contract for medical care and can only do so through a parent or guardian. Therefore, the Court held the child was bound by the valid arbitration agreement signed by her mother.

In *Leong v. Kaiser Foundation Hospitals*, 788 P.2d 164 (Hawaii 1990), the Hawaii Supreme Court held, as a matter of public policy, that a parent has the power to bind her child to an arbitration agreement. This decision also reflected the legislative policy to "encourage arbitration as a means of settling differences and thereby avoid litigation."

In *Pietrelli v. Peacock*, 16 Cal. Rptr. 2d 688 (1993), the question before the court was whether a child was bound by an arbitration agreement signed by his mother before the child was even conceived. Pietrelli's mother executed an arbitration agreement with the physician that covered "any controversy between me and Doctor concerning medical care and any such controversy between Doctor and persons, born or unborn, on behalf of whom I have the power to contract…." The court stated that "it has long been the law that a parent has the power to bind a minor child to arbitration of claims arising from the minor's health care contract, which has been implied from the parent's duties and rights as the child's guardian. At the moment of conception, the child became an 'unborn person' within the definition set forth" in their contract.

In *Hilleary v. Garvin*, 238 Cal.Rptr. 247 (Cal.App.1987), Hilleary executed an arbitration agreement on her initial visit to determine whether she was pregnant. She was diagnosed as pregnant with the threat of miscarriage due to fibroid tumors. After a miscarriage, Hilleary later agreed to surgery to remove the tumors, and complications arose in this surgery. Hilleary argued that the arbitration agreement applied only to the pregnancy and not the subsequent surgery. The Court found the broad language of the arbitration agreement was clear and that sufficient steps were taken to make a valid agreement.

Finally, the Florida Supreme Court has recently held that the estate of a deceased minor child is bound to the arbitration provision in a contract signed by the minor child's parent. In *Global Travel Mktg., Inc. v. Shea***,** 908 So. 2d 392 (Fla. 2005), the mother signed a contract with a safari company on behalf of herself and her minor son. The child was killed during the safari trip. The deceased minor's father then sued the travel company in Florida for wrongful death. The court held that the arbitration provision in the contract was enforceable and that the estate's right to recover damages against the company was limited to the arbitration remedy provided by the contract. While this case does not involve a claim for medical malpractice, it evinces a clear sign that Florida courts would enforce an arbitration provision in a physician-patient contract signed on behalf of a minor patient by its parent.

➢ Issue: If there are co-defendants, can defendants who are not subject to arbitration agreements be forced into that process or will it be the reverse where the court will allow all to proceed in litigation?

The OGRRGA Patient Physician Arbitration Agreement allows the addition of parties to the Agreement, and requires that all claims for the same tort be arbitrated at the same time. Other parties – such as a hospital – can choose not to be included, and parties who choose to be excluded will have separate litigation. OGRRGA would not become a party to such litigation, its case having been heard under binding arbitration and the PPAA.

➢ Issue: Would a co-defendant seeking contribution be bound to arbitration?

See response above.

➢ Issue: What specific med-mal arbitration precedents are there in the states which OGRRGA is going to target?

See the attached list of state laws in the Appendix "A." In general, the states which OGRRGA has initially targeted (with the exception of Montana) are "friendly" to binding arbitration. It should be noted that state laws not favouring binding arbitration are not necessarily a problem in any case. As the federal Arbitration Act is controlling, even an initial challenge at a lower state court would likely throw out a state law contrary to federal principle.

- The CAP-MPT experience is very helpful, but that is one state. Other states have not yet embraced the concept. If the business plan is state specific, we can explain why it will work and be accepted in those specific states, which will have much more impact than making a national statement.

Most states have embraced the federal Arbitration Act. Again, see Appendix "A." Further, the FAA "trumps" the state statutes which might seek to lessen its broad reach.

- Any statistics we can get from CAP MPT will help. London reinsurers are familiar with the CAP MPT concept, know it has been working and so will be comforted to feel this is an extension of that model. One word of caution, CAP MPT rate on a claims paid basis and although this has worked for them, we need to stress that OGRRGA is on a traditional fully funded rating base.

- CAP-MPT has no available statistics. Gordon Ownby, its senior counsel, has said in private

conversation that the company never had any interest in providing its statistics to other companies, nor in conducting comparative surveys.

- The California Pacific experience would be of interest. Kaiser is relevant but also different because as an HMO it can force all patients into arbitration as they can't go elsewhere.

Kaiser does not require binding arbitration. However, the experience of Kaiser physicians, according to Michael Hawkins (now of Carpenter-Hawkins, a California lobby firm, and author of the original Kaiser-Permanente binding arbitration concept), is that the vast majority of patients sign binding arbitration agreements without complaint. No "forcing" is necessary.

I trust that this information will assist you in your ongoing efforts to utilize arbitration remedies.

Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Jeffrey S. Badgley

APPENDIX "A"

Interplay Between The Federal Arbitration Act (FAA) and State Arbitration Law

Federal Law Requires The Enforcement Of Pre-Dispute Arbitration Agreements And Preempts State Law That Restricts Arbitration.

SELECTED AUTHORITIES

Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001)
Doctor's Assocs. v. Casarotto, 517 U.S. 681 (1996)
Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265 (1995)
Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991)
Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1984)
Southland Corp. v Keating, 465 U.S. 1 (1984)
Wilko v. Swan, 346 U.S. 427 (1953)
Weeks v. Harden Mfg. Corp., 291 F.3d 1307 (11th Cir. 2002)
Adkins v. Labor Ready, Inc., 303 F.3d 496 (4th Cir. 2002)
Hightower v. GMRI, Inc., 272 F.3d (4th Cir. 2001)
Patterson v. Tenet Healthcare, 113 F.3d 832 (8th Cir. 1997)
Hill v. Gateway 2000, 105 F.3d 1147 (7th Cir. 1997)
Saturn Distribution Corp. v. Williams, 905 F.2d 719 (4th Cir. 1990)
Cost Bros., Inc. v Travelers Indem. Co.,760 F.2d 58 (3rd Cir. 1985)
Kroog v. Mait, 712 F.2d 1148 (7th Cir. 1983)
Toledo v Kaiser Permanente Med. Group, 987 F.Supp. 1174 (N.D. Cal, 1997)
Crawford v West Jersey Health Sys., 847 F.Supp. 1232 (D.N.J., 1994)

INTRODUCTION

The Federal Arbitration Act ("FAA") was passed to reverse the courts' bias against arbitration. Section 2 of the FAA expressly states that written agreements to arbitrate future disputes are "valid, irrevocable, and enforceable, save upon such grounds as exist at law in equity for the revocation of any contract." 9 U.S.C. § 2. This provision applies to the vast majority of claims brought in both state and federal courts. Keating, supra. The FAA applies to common law and statutory claims. The Supreme Court has expressly held that the FAA applies to all disputes involving interstate commerce (including transactions involving individuals) and that the FAA should be read broadly to require arbitration where the contract contains an arbitration clause. Dobson, supra; see also Toledo v. Kaiser Permanente Med. Group, supra; Patterson, supra. Underlying this policy is Congress' view that arbitration constitutes a more efficient dispute resolution process than litigation. Hightower, supra.

THE FAA EMBODIES A NATIONAL POLICY FAVORING PRE-DISPUTE ARBITRATION CLAUSES

The FAA embodies a policy in favor of enforcing agreements to arbitrate. The FAA was enacted to enforce agreements between parties to arbitrate future disputes. In enacting the FAA, Congress declared a national policy favoring arbitration and withdrew the power of states to require a judicial forum for resolution of claims which contracting parties agreed to resolve by arbitration. Keating, supra; see also Weeks, supra. The legislative history of the Act establishes that the purpose behind its passage was to ensure judicial enforcement of private agreements to arbitrate future disputes.

"This bill declares simply that such agreements for arbitration shall be enforced, and provides a procedure in the Federal courts for their enforcement… It is practically appropriate that the action should be taken at this time when there is so much agitation against the costliness and delays of litigation. These matters can be largely eliminated by agreements for arbitration, if arbitration agreements are made valid and enforceable." H.R.Rep. No. 96, 68th Cong., 1st Sess., 1-2 (1924).

The Supreme Court, in reviewing arbitration cases, has upheld and insisted on a policy of enforceability of pre-dispute arbitration clauses. Keating, supra; Dobson, supra; Adams, supra.

Justice Stevens spoke to the underpinnings of the policy in Circuit City v. Adams:

"Times have changed. Judges in the 19th century disfavored private arbitration. The 1925 Act was intended to overcome that attitude, but a number of the Court's cases decided in the last several decades have pushed the pendulum far beyond a neutral attitude and endorsed a policy that strongly favors private arbitration. The strength of that policy preference has been echoed in the recent Court of Appeals opinions on which the Court relies." Circuit City Stores, Inc. v. Adams, supra at 131-132.

THE FAA PRE-EMPTS STATE LAWS THAT RESTRICT ARBITRATION

The Supreme Court has directed that, when the FAA applies to an agreement, state laws that purport to restrict or limit arbitration cannot prevent the enforcement of an arbitration agreement. Keating, supra; Dobson, supra; Casarotto, supra; Cost Bros., Inc., supra. While the FAA does not have an express pre-emption provision, Congress has implicit pre-emption power through the supremacy clause. U.S. Const. Art VI, §2.

When the FAA applies, courts may not invalidate arbitration agreements under state laws applicable only to arbitration provisions. Saturn Distribution Corp, supra, at 722. Therefore, when a state prohibits arbitration, the FAA preempts state law. Dobson, supra. In enacting the FAA, Congress "withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." Keating, supra at 2.

Federal pre-emption limits the ability of a state to place requirements on arbitration agreements. In Casarotto, supra, the Supreme Court ruled that the FAA preempted a Montana statute that placed state requirements on an otherwise valid arbitration clause. The Montana statute declared an arbitration clause unenforceable unless the clause was printed in a certain format. Subsequently, other courts have interpreted the FAA as preempting state law restrictions regarding either format or the nature of the arbitration agreement. Hill, supra.

STATUTORY CLAIMS CAN BE ARBITRATED

The Supreme Court has consistently enforced agreements to arbitrate statutory claims. Claims made pursuant to the ADEA, RICO, Title VII and ERISA are arbitrable under pre-dispute arbitration clauses. In coming to this conclusion, the Court has said:

By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than judicial, forum. It trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration. Mitsubishi Motors, supra at 628.

The Supreme Court reaffirmed that statutory claims of individuals can be arbitrated. Gilmer, supra. The Court's rationale was that as long as the prospective litigant may effectively vindicate [his or her] statutory cause of action in the arbitral forum, then the statute will continue to serve both its remedial and deterrent function. Id., at 28.

The FAA also preempts state statutes that limit arbitration or specifically state that arbitration provisions do not apply to claims under the involved statute. Adkins, supra. "The goal of Congress was to establish arbitration as a desirable alternative to the complications of litigation." Wilko, supra. Congress intended the Act to apply to controversies based on statutes, common law, or otherwise. Id., at 432.

CONCLUSION

Federal law requires the enforcement of contracts to arbitrate future disputes. The FAA preempts state laws that restrict arbitration. Congress has created and the Supreme Court has consistently affirmed a policy requiring enforcement of pre-dispute arbitration agreements, including agreements to resolve all statutory and common law claims by arbitration.