

IN THE SUPREME COURT OF THE STATE OF NEVADA

PACIFICARE OF NEVADA, INC.;
PACIFICARE LIFE AND HEALTH
INSURANCE COMPANY; PACIFICARE
LIFE ASSURANCE COMPANY;
UNITED HEALTHCARE INSURANCE
COMPANY; AND UNITED HEALTH
GROUP, INC.,
Appellants,
vs.
ALYNNE GRIFFITHS,
Respondent.

No. 53789

FILED

MAR 17 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order denying a motion to compel arbitration in a tort action. Eighth Judicial District Court, Clark County; Allan R. Earl, Judge.

After reviewing several arbitration provisions within a series of contracts between appellants PacifiCare of Nevada, Inc., et al., and respondent Alynne Griffiths, the district court concluded that the arbitration provisions were unconscionable and therefore denied PacifiCare's motion to compel arbitration. However, in analyzing the provisions, the district court expressly declined to indicate which provision or provisions governed the parties' dispute.

On appeal, PacifiCare argues that the district court erred in refusing to indicate which arbitration provision or provisions governed the

parties' dispute but nonetheless concluding that the arbitration provisions were unconscionable.¹ We agree.

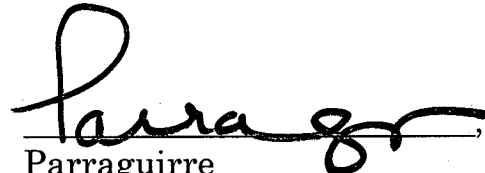
At oral argument, Griffiths' counsel conceded that the parties entered into separate contracts each year and that "the starting point for any analysis . . . [is for the court to] decid[e] which contract applies to this dispute." Before finding the provisions to be unconscionable, the district court should have identified which contract and so, which arbitration provision or provisions, if any, governed the parties' dispute, and should have then analyzed each provision separately without regard to prior or subsequent provisions. See NRS 38.219(2) ("The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.")² Because the district court did not conduct this analysis, we

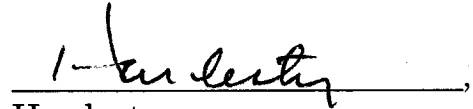
ORDER the judgment of the district court REVERSED and REMAND this matter to the district court to identify the applicable arbitration provision or provisions and to determine whether the

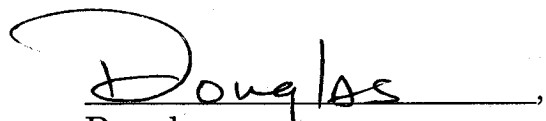
¹PacifiCare also argues that the district court was preempted from applying Nevada's unconscionability analysis by the federal Medicare Act, and that the district court erred in concluding that the arbitration provisions were unconscionable. Because we reverse the district court's order based on its failure to identify the applicable arbitration provision or provisions, we do not reach PacifiCare's additional arguments.

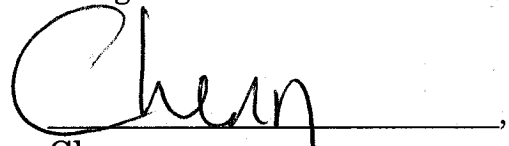
²We note that because the parties entered into new contracts each year, they were free to negotiate new arbitration provisions for each new contract, and were not required to extend to each other identical terms in the successive contracts. See Griffin v. Old Republic Ins. Co., 122 Nev. 479, 487, 133 P.3d 251, 256 (2006) ("We have consistently held that parties may freely contract . . ."). Therefore, the changing nature of the arbitration provisions is irrelevant.

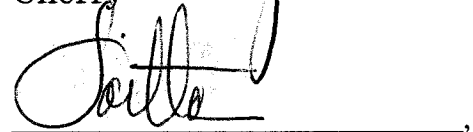
applicable provision or provisions mandate arbitration of Griffiths' claims.³


 C.J.
Parraguirre

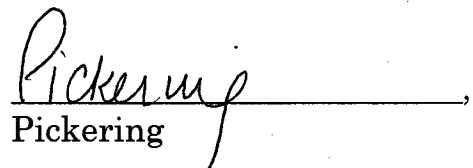
 J.
Hardesty

 J.
Douglas

 J.
Cherry

 J.
Saitta

 J.
Gibbons

 J.
Pickering

³On January 4, 2010, Griffiths filed a motion to supplement the record, which we granted on January 6, 2010. On January 7, 2010, PacifiCare filed a response to Griffiths' motion to supplement the record, which we construe as a motion for reconsideration. In light of our decision to reverse and remand, PacifiCare's motion for reconsideration is denied as moot.

cc: Hon. Allan R. Earl, District Judge
M. Nelson Segel, Settlement Judge
Bryan Cave LLP
Friedman / Rubin
Jones Vargas/Las Vegas
Friedman, Rubin & White
Friedman/Rubin
Gerald I. Gillock & Associates
Matthew L. Sharp
Eighth District Court Clerk