

IN THE SUPREME COURT OF THE STATE OF NEVADA

PACIFICARE OF NEVADA, INC.;
PACIFICARE LIFE AND HEALTH
INSURANCE COMPANY; PACIFICARE
LIFE ASSURANCE COMPANY; AND
UNITED HEALTHCARE INSURANCE
COMPANY,

Appellants,

vs.

RODOLFO MEANA AND LINDA
MEANA,
Respondents.

No. 55754

FILED

OCT 27 2011

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 and contract action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Between 2007 and 2008, respondents Linda and Rodolfo Meana received Medicare benefits through Pacificare's federally approved Medicare Advantage Plan, Secure Horizons.¹ In 2007, Rodolfo contracted hepatitis C after receiving treatment from a facility included in the Secure Horizons plan. In 2008, Rodolfo discovered his injury and sued Pacificare, asserting various negligence claims related to Pacificare's failure to implement an appropriate quality assurance program.

Pacificare brought a motion to compel arbitration under a provision in the parties' 2007 contract. The district court denied


¹For the sake of clarity, we refer to appellants Pacificare of Nevada, Inc.; Pacificare Life and Health Insurance Company; Pacificare Life Assurance Company; and United Healthcare Insurance Company, collectively, as "Pacificare."

Pacificare's motion, finding the arbitration provision to be unconscionable under Nevada contract law.

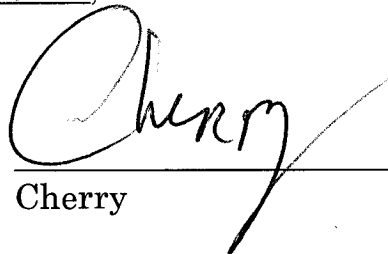
On appeal, Pacificare contends that the district court erred in determining that the arbitration provision was unconscionable under Nevada contract law because such law is preempted by the federal Medicare Act. We agree.

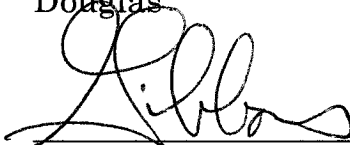
Pursuant to Pacificare v. Rogers, 127 Nev. __, __, __ P.3d __, __ (Adv. Op. No. __, ____, __, 20__), we conclude that Nevada's unconscionability doctrine is preempted to the extent that it would impede the federal regulation of Medicare plans. As such, any inquiry into the arbitration provision's unconscionability would be foreclosed by the express preemption provision in the Medicare Act. Accordingly, we

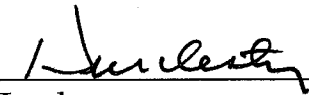
ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.²

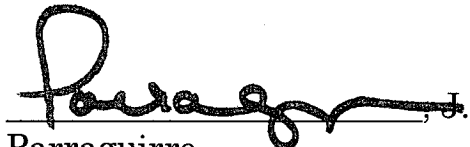

Saitta, C.J.


Douglas, J.


Cherry, J.


Gibbons, J.


Hardesty, J.


Parraguirre, J.

²The Honorable Kristina Pickering, Justice, did not participate in the decision of this matter.

cc: Hon. Michael Villani, District Judge
Robert F. Saint-Aubin, Settlement Judge
Jones Vargas/Las Vegas
Bryan Cave LLP/Phoenix
Gerald I. Gillock & Associates
Friedman, Rubin & White
Matthew L. Sharp
Friedman/Rubin-Anchorage
Eighth District Court Clerk