No. 02-215

In the
Supreme Court of the United States

PACIFICARE HEALTH SYSTEMS, INC., ET AL.,
Petitioners,

v.

JEFFREY BOOK, D.O., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF THE WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a district court must compel arbitration of a plaintiff's RICO claims under a valid arbitration agreement even if that agreement does not allow an arbitrator to award punitive damages, leaving to the arbitrator in the first instance the decision of what remedies are available to the RICO plaintiff in arbitration.

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INTEREST OF *AMICUS CURIAE*

The Washington Legal Foundation ("WLF") is a non-profit public interest law and policy center based in Washington, D.C., with supporters nationwide.[1] WLF seeks to strengthen the free enterprise system and protect the economic and civil liberties of individuals and businesses.

WLF has devoted substantial resources to promoting civil justice reform and freedom of contract. It has published numerous monographs and other educational materials on issues relating to alternative dispute resolution. *See, e.g.*, Michael J. Connolly & Clifford J. Scharman, *U.S. Supreme Court Gives Employers A Chance To Avoid Costly Litigation*, LEGAL BACKGROUNDER (Jun. 9, 2001); Richard Eckman, Stephen Harvey & Jeffrey Techentin, *Arbitration Clauses Can Safeguard Lenders From Class Actions*, LEGAL OPINION LETTER (Dec. 15, 2000); Paul W. Cane, Jr. & E. Jeffrey Grube, *Employment Dispute Arbitration: An Antidote To Frivolous Litigation*, LEGAL BACKGROUNDER (Nov. 13, 1998); Jay W. Eisenhower, *Delaware's New Summary Procedure For Business Disputes Could Reduce Legal Costs*, LEGAL OPINION LETTER (Sept. 9, 1994). It has also appeared as *amicus curiae* in several cases addressing punitive damages issues. *See, e.g., State Farm Mut. Automobile Ins. Co. v. Campbell*, No. 01-1289; *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996); *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994); *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443 (1993).

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[1] Both petitioners and respondents have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, WLF states that no counsel for a party authored this brief in whole or in part, and that no person or entity, other than WLF and its counsel, contributed monetarily to the preparation or submission of this brief.

WLF believes that the decision below is an ill-conceived departure from settled precedent and the sound policies of the Federal Arbitration Act. If left intact, the decision will impose substantial costs not only on the managed health care industry but on all entities that voluntarily seek to resolve disputes through arbitration. These increased costs will ultimately be borne by patients, consumers, and society as a whole. WLF thus brings a broader perspective to the issues in this case than either of the parties.

WLF submits this brief as *amicus curiae* in support of petitioners. For reasons set forth below, WLF urges the Court to reverse the decision of the Eleventh Circuit.

STATEMENT OF THE CASE

Respondents are medical doctors who entered into physician agreements with various managed care organizations, including UnitedHealthcare, Inc. and United Health Group Incorporated, and PacifiCare Health Systems, Inc. and PacifiCare Operations, Inc.. *See* Pet. App. A-60-63. The agreements contain two provisions relevant to the issues presented in this case. The first provision requires that the parties submit "any disputes about their business relationship" to "binding arbitration." Pet. App. A-62-63; *see also* Pet. App. A-60-61. The second states that arbitrators shall have no authority to award punitive or exemplary damages. *See id.* at A-60-63; *see also* Pet. App. A-30-31.

On August 14, 2000, respondents sued petitioners and other managed care organizations, claiming among other things that they had violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961, *et seq.* ("RICO"). Petitioners moved in the district court to compel arbitration pursuant to the plain terms of the parties' agreements.

The district court found that respondents were "sophisticated" commercial actors, *see* Pet. App. A-25-26, and that the parties' agreements were generally enforceable, *see id.* at A-29. Nevertheless, the district court declined to compel arbitration of respondents' RICO claims. It determined that, because the parties had agreed to waive punitive damages, respondents could not recover RICO's treble damages in arbitration. *See id.* at A-31; *see also id.* at A-41. It then held that, even though respondents had freely agreed to arbitrate all disputes, respondents were not required to arbitrate their RICO claims because they could not obtain "meaningful relief" in arbitration. *See id.* at A-31; *see also id.* at A-41.

The Court of Appeals for the Eleventh Circuit affirmed the district court "for the reasons set forth" in the lower court's opinion. *See* Pet. App. A-4.

SUMMARY OF ARGUMENT

1. Federal law requires that courts enforce arbitration agreements according to their terms. Here, the parties agreed to arbitrate all disputes about their business relationships. *See* Pet. App. A-62-63. The district court therefore should have compelled arbitration of respondents' RICO claims as required by the parties' agreements.

The district court's refusal to enforce the parties' agreements disregards this Court's settled precedent and promotes precisely the type of litigation that the parties' agreements were designed to avoid. Once the court decided that the dispute was covered by a valid arbitration agreement, it should have compelled arbitration, and left any issues regarding the validity and scope of a waiver of statutory remedies to be decided by the arbitrators in the first instance. The court below thus erred by usurping the role of the arbitrator and, in so doing, allowing respondents to

nullify their arbitration agreements with petitioners. And even if the court was entitled to address the validity of respondents' waiver of statutory remedies, the court erred by holding that RICO did not allow such waiver. The normal rule in our legal system is that parties are free to waive their statutory rights and remedies unless Congress precludes such waiver. Congress did not remotely so preclude in RICO.

2. Reversing the lower court and enforcing the parties' agreements according to their terms also serves broader policy goals. Arbitration agreements between physicians and managed care organizations are a critical tool for controlling the skyrocketing costs of health care. By mutually agreeing to arbitrate disputes and waive punitive damages, the parties sought to ensure that their disputes would be resolved quickly and efficiently, and to avoid destructive high-stakes litigation. These direct economic benefits far outweigh any societal interest in encouraging private attorneys general to pursue treble damages under RICO in the face of an express waiver by sophisticated parties of the right to pursue such damages.

ARGUMENT

I. THE COURT SHOULD ENFORCE THE PARTIES' AGREEMENTS ACCORDING TO THEIR TERMS

Federal law provides that arbitration agreements must be enforced like other contracts—according to their terms. *See* 9 U.S.C. § 2; *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625-26 (1985). This Court's prior cases make clear that a court asked to compel arbitration has the limited task of determining whether the parties' dispute is within the scope of a valid arbitration agreement. If the parties agreed to arbitrate the dispute, that is the end of the matter, and the court must honor the parties' agreement.

Here, because the parties agreed to arbitrate "any dispute about their business relationship," Pet. App. A-62-63, the district court should have compelled respondents to arbitrate their business-related RICO claims. Instead, the district court disregarded the parties' agreement because it did not believe that the arbitrators could award respondents "meaningful relief." *Id.* at A-31. For reasons explained below, the lower court's decision departs from this Court's precedents and should be reversed.

A. Federal Arbitration Law Is Based On Freedom Of Contract

The most fundamental precept of federal arbitration law is freedom of contract. Indeed, the "basic purpose" of the Federal Arbitration Act is "to overcome courts' refusals to enforce agreements to arbitrate," *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 838 (1995), thereby placing those agreements on "the same footing as other contracts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991). The Act creates "at bottom a policy guaranteeing the enforcement of private contractual arrangements." *Mitsubishi*, 473 U.S. at 625. It is therefore well-settled that courts must "enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms." *Volt Info. Sciences, Inc. v. Board of Trs. of Stanford Univ.*, 489 U.S. 468, 478 (1989).

It is equally well-settled that parties "are generally free to structure their arbitration agreements as they see fit." *Id.* at 469 (citations omitted); *see also Baravati v. Josephthal, Lyon & Ross, Inc.*, 28 F.3d 704, 709 (7th Cir. 1994) (Posner, J.) ("[P]arties are as free to specify idiosyncratic terms of arbitration as they are to specify any other terms in their contract."). This Court accordingly has not hesitated to give full effect to "the contractual rights and expectations of the parties." *Volt*, 489 U.S. at 479 (noting that courts must

"rigorously enforce" arbitration agreements according to their terms). When an arbitration agreement is "made in an arms-length negotiation by experienced and sophisticated" parties, it must be honored and enforced. *Southland Corp. v. Keating*, 465 U.S. 1, 7 (1984).

Moreover, because federal law requires "rapid and unobstructed enforcement of arbitration agreements," a court's role in determining arbitrability is limited. *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 201 (2000) (internal quotation omitted). When asked to compel arbitration of a particular dispute, the court must determine whether the dispute is within the scope of a valid arbitration agreement. *See Mitsubishi,* 473 U.S. at 626. If the court determines that it is, the court's work is done—it must refer the dispute to arbitration. As this Court has repeatedly emphasized, "[c]ontracts to arbitrate are not to be avoided by allowing one party to ignore the contract and resort to the courts." *Southland*, 465 U.S. at 7.

This Court has also emphasized that federal policy favors arbitration. In the absence of "fraud or overwhelming economic power that would provide grounds 'for the revocation of any contract,'" *Mitsubishi*, 473 U.S. at 627, all doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *See Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). An "order to arbitrate . . . should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible [to] an interpretation that covers the asserted dispute." *See AT&T Technologies, Inc. v. Communications Workers of Am.*, 475 U.S. 643, 650 (1986) (internal quotation omitted).

Consistent with this pro-arbitration policy and with freedom of contract principles, a court may not rewrite the parties' agreement by usurping the role assigned to the

arbitrator. In this vein, a court asked to compel arbitration must not delve into the "potential merits of the [parties'] underlying claims." *AT&T Techs.*, 475 U.S. at 649. Other than determining what disputes are within the scope of arbitration, a court has no authority to interpret the provisions of the parties' substantive agreement. *See, e.g.*, *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557 (1964) ("'[P]rocedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator."). As this Court has noted, "[s]uch a course could lead to prolonged litigation, one of the very risks the parties, by contracting for arbitration, sought to eliminate." *Southland*, 465 U.S. at 7.

B. The Parties' Agreement To Arbitrate RICO Claims Should Be Enforced

In this case, application of this Court's settled precedents is uncomplicated. There is no dispute that the arbitration agreements between respondents and petitioners were freely negotiated among sophisticated commercial actors. *See* Pet. App. A-24-29. And no one could suggest that the agreements resulted from the "sort of fraud" that could provide grounds for revocation of any contract. *See Mitsubishi*, 473 U.S. at 627 (citing 9 U.S.C. § 2). Accordingly, because the language of the agreements is sufficiently broad to cover RICO claims, the district court should have enforced the parties' agreement and compelled arbitration.

Respondents avoided this straightforward result by convincing the district court that arbitration would deprive them of "meaningful relief." Pet. App. at A-30-31. Although the district court acknowledged that respondents were asking it to "negate [their] contractual obligations," *id.* at A-22, it nonetheless declined to enforce the parties' agreements. It concluded that, because the parties waived

punitive damages, respondents could not recover RICO treble damages in arbitration. *See id.* at A-30-31. At bottom, the district court's decision rests on its conclusion that, by waiving punitive damages, the parties rendered their agreement unenforceable. *See id.* This extreme position is wrong, for two basic reasons.

First, the district court erred at the outset by delving into the validity and scope of the damages limitation in the parties' agreement. As long as there is no doubt that the parties agreed to arbitrate a dispute, "defenses to performance—even those that logically defeat arbitration—belong to the arbitrator." *Metro East Ctr. for Conditioning & Health v. Qwest Communications Int'l, Inc.*, 294 F.3d 924, 929 (7th Cir. 2002) (Easterbrook, J.); *see also Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-04 (1967). Once it is determined that the parties agreed to arbitrate a particular dispute, the arbitrator can resolve defenses to enforcement without risk that arbitration is being foisted on non-consenting parties. *See Prima Paint,* 388 U.S. at 403-04. Several courts of appeals have therefore correctly held that, under *Prima Paint*, the arbitrator in the first instance determines whether contractual limitations on remedies are valid. *See Boomer v. AT&T Corp.*, 309 F.3d 404, 419 n.6 (7th Cir. 2002); *Larry's United Super, Inc. v. Werries*, 253 F.3d 1083, 1086 (8th Cir. 2001); *MCI Telecommunications Corp. v. Matrix Communications Corp.*, 135 F.3d 27, 33 n.12 (1st Cir. 1998); *Great Western Mortgage Corp. v. Peacock*, 110 F.3d 222 (3d Cir. 1997).

The district court's failure to defer to the arbitrator reflects the type of "judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals," that this Court long ago rejected. *See, e.g., Mitsubishi*, 473 U.S. at 626-27. As this Court has repeatedly noted, there is simply no reason to assume that arbitrators will not follow

the law. *See Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 232 (1987). The district court therefore erred by not allowing the arbitrator in the first instance to address the validity of the parties' punitive damages limitation as applied to respondents' RICO claims.

Second, even assuming that the district court had the power to reach the issue, the court erred by concluding that respondents' waiver of treble damages under RICO was invalid. It is axiomatic that parties may generally agree to waive their statutory rights and remedies. *See, e.g., Shutte v. Thompson*, 82 U.S. (15 Wall.) 151, 159 (1873) ("A party may waive any provision . . . of a statute intended for his benefit."); *see also United States v. Mezzanatto*, 513 U.S. 196, 201 (1995) ("[W]e have presumed that statutory provisions are subject to waiver by voluntary agreement of the parties."). After all, "[o]ne aspect of personal liberty is the entitlement to exchange statutory rights for something valued more highly." *Metro East,* 294 F.3d at 929. Accordingly, having made a "bargain to arbitrate, . . . part[ies] should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Mitsubishi,* 473 U.S. at 628; *see also Mezzanatto*, 513 U.S. at 201; *Metro East*, 294 F.3d at 928 ("As far as we know, the Supreme Court has never held that *any* entitlement is outside the domain of contract, unless the statute forbids waiver.").

It is therefore significant that this Court has already held that nothing in the text or legislative history of RICO suggests that Congress intended to exclude RICO treble damages claims from the ambit of the Federal Arbitration Act. *See McMahon*, 482 U.S. at 242. Needless to say, "no citizen is under any obligation to bring [a RICO] suit." *Mitsubishi*, 473 U.S. at 636. Nor does a private RICO plaintiff need "executive or judicial approval before settling

one." *Id.* Indeed, a private RICO plaintiff is free to settle a RICO suit for less than its full expected value in order to avoid the costs associated with prolonged litigation.

It necessarily follows, therefore, that private parties can by contract agree to limit their recoveries under RICO. Because parties need not bring RICO claims in the first place, need not pursue their full remedies under the statute, and may designate an arbitral forum for such claims, they are logically free to limit the damages available in the arbitral forum. *See id.* That is certainly true of the sophisticated private parties at issue here: it is neither necessary nor appropriate for the courts to rewrite the parties' agreements to give respondents benefits for which they did not bargain.

II. ENFORCING THE PARTIES' AGREEMENTS ACCORDING TO THEIR TERMS WILL HELP KEEP HEALTH CARE COSTS UNDER CONTROL

While enforcing the parties' agreements according to their terms is required by settled precedent, it is also consistent with important broader policy goals. The Federal Arbitration Act's focus on enforcing private contracts benefits society as a whole. *See, e.g.,* Michael I. Krauss, *Tort Law and Private Ordering*, 35 St. Louis U. L.J. 623, 625-26 (1991). Rigorous enforcement of contracts allows parties to regularize their relations and to reduce future uncertainties by creating rules well-suited to their peculiar circumstances. *See, e.g.,* Richard A. Epstein, *Market And Regulatory Approaches to Medical Malpractice: The Virginia Obstetrical No-Fault Statute*, 74 Va. L. Rev. 1451, 1453-55 (1998) (explaining the logic of contract).

Here, these principles have real-world significance. Arbitration agreements between physicians and managed care organizations are a vital tool for controlling ever-burgeoning costs. *See* American Arbitration Assoc.,

Am. Bar Assoc., Am. Med. Assoc., *Final Report* (July 27, 1998) (recommending that arbitration "can and should be used" to resolve disputes between health care providers and managed care organizations). Because litigation is costly and time-consuming, arbitration (like other forms of alternative dispute resolution) "has increasingly gained acceptance and recognition among healthcare providers and insurers as a quick and inexpensive means of resolving various types of healthcare disputes." Alma Saravia, *Overview of Alternative Dispute Resolution in Healthcare Disputes*, 32 J. Health L. 139, 140 (1999).

Moreover, as commentators have noted, disputes between physicians and managed care organizations are especially well-suited for arbitration. *See id.* at 143; *see also* Roderick B. Mathews, *The Role of ADR In Managed Health Care Disputes*, 54 Disp. Resol. J. 8, 11 (Aug. 1999) ("The advantages of ADR are particularly compelling in the managed health care context.") Most physicians and managed care organizations "have entered into long term relationships, sharing the common goal of providing treatment to patients." Saravia, *Overview of Alternative Dispute Resolution*, 32 J. Health L. at 140. Arbitration is therefore a useful mechanism that permits parties to resolve their disputes while maintaining continued business relationships. *See* Saravia, *Overview of Alternative Dispute Resolution*, 32 J. Health L. at 143; *see also* Ann H. Nevers, *Medical Malpractice Arbitration In The New Millennium: Much Ado About Nothing?*, 1 Pepp. Disp. Resol. L.J. 45, 49-50 (2000) ("Arbitration makes it easier for the parties involved to maintain their relationships while increasing the opportunity for the claimant to be satisfied").

Under these circumstances, it makes sense that physicians and managed care organizations might agree, as they did here, to limit the remedies available in arbitration.

It is generally accepted, for example, that punitive damages are a "powerful weapon" that "have a devastating potential for harm." *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 42-46 (1991) (O'Connor, J., dissenting). Indeed, scholars have shown that punitive damage awards may well impose substantial costs on society with little (if any) tangible benefits. *See* W. Kip Viscusi, *Why There Is No Defense Of Punitive Damages*, 87 Geo. L.J. 381 (1998); *see also* W. Kip Viscusi, *The Social Costs Of Punitive Damages Against Corporations in Environmental & Safety Torts*, 87 Geo. L.J. 285 (1998).

By forgoing punitive damages in arbitration, physicians and managed care organizations have thus mutually agreed to disarm themselves of the most threatening legal weaponry. Both parties to the contract benefit, as does the general public. Disputes are quickly and efficiently resolved, destructive high-stakes litigation is avoided, and health care costs are kept in check. *See* Nevers, *Medical Malpractice Arbitration,* 1 Pepp. Disp. Resol. L.J. at 50 (noting that in traditional litigation, unlike arbitration, "a large amount of the award lands in the pockets of the plaintiff's attorney").

In this context, the notion that respondents are deprived of "meaningful relief" by arbitrating their RICO claims is fanciful. Nothing in the agreements prevents the respondents from recovering the actual damages they may have suffered. The agreements only prevent either party from recovering a windfall in punitive damages.

Nor is there any broader policy reason for encouraging parties to breach their contracts and litigate RICO claims that they promised they would arbitrate. After all, no one could reasonably suggest that managed care organizations are the "archetypal, intimidating mobster," that RICO actions were designed to fight. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985). The direct economic benefits of decreased

health care costs are surely more important to the Nation's well-being than any interest in encouraging private attorneys general to recover treble damages awards that they have expressly disclaimed.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the court of appeals.

Respectfully submitted,

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