

# Insurer's Rescission of Policy Renders Arbitration Provision Unenforceable

---

February 2006

A Florida appellate court has denied a motion to compel arbitration based on the arbitration provision in a health insurance policy, holding that when the insurer properly rescinded the policy by returning the insured's premium it also voided the arbitration provision contained in the policy. *Towers v. Clarendon Nat'l Ins. Co.*, 2006 WL 12939 (Fla. App. 2d Dist. Jan. 4, 2006).

The insured purchased a health insurance policy that contained an arbitration provision. The arbitration provision stated that it applied to "[a]ny disputes which You may have under the Group Policy or otherwise with Us or Our authorized (sic) Administrator . . . . The right of arbitration may be invoked by either You or Us or both." The insured subsequently made a claim under the policy, and the insurer denied the claim on the ground that it was based on a preexisting condition. The insurer then returned the insured's premium and voided her coverage under the policy. The policyholder filed suit against the insurer for breach of contract, fraud in the inducement, negligent misrepresentation, and violations of the Florida Deceptive and Unfair Trade Practices Act. The insurer filed a motion to dismiss or, alternatively, to stay the proceedings and compel arbitration. The trial court granted the motion to compel arbitration, and the policyholder appealed.

The appellate court stated that it must consider three elements when evaluating a motion to compel arbitration: (1) whether a valid written agreement exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration has been waived. The policyholder argued that the first element was not met because, although the parties entered into a valid written agreement, that agreement was voided when the insurer rescinded coverage under the policy. The court agreed.

The court explained that, under Florida law, an insurer can unilaterally rescind an insurance policy based on misrepresentation by the insured in the application. The court held that the insurer had voided the contract by returning the insured's premium. The court concluded that, by doing so, the insurer had rendered "all of the contractual provisions, including the arbitration clause, unenforceable."