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Supreme Court Decision Limits Class Action Suits

In a decision handed down on Wednesday, April 27th, the United States Supreme Court put the brakes on a growing judicial trend to deny enforcement of consumer contract arbitration provisions in class action cases. Over the past several years, California and a number of other state and federal courts held that consumer contracts containing arbitration provisions were unconscionable unless they allowed for class arbitration. In *AT&T Mobility LLC v. Concepcion*, 563 U.S. ____ (2011), the Supreme Court ruled on Wednesday, April 27th, that the Federal Arbitration Act (FAA) (9 U.S.C. §2) preempts any state law that conditions enforceability of consumer arbitration agreements on the availability of class-wide arbitration procedures.

Plaintiffs sued AT&T Mobility in San Diego federal court as representatives of a putative class seeking to recover sales tax charges for phones AT&T had advertised as "free." AT&T Mobility's sales contracts provided a variety of consumer-friendly dispute resolution procedures for individual arbitration or small claims court adjudication in the county in which the consumer resided, at AT&T Mobility's cost, but did not permit arbitration of class claims. When AT&T moved to compel arbitration against the Concepcion plaintiffs, the Southern District of California court denied the motion, even though it found that AT&T Mobility customers were likely "better off" under the arbitration provision than as class action plaintiffs. In denying the motion to compel arbitration, the district court relied on a California Supreme Court decision in *Discover Bank v. Superior Court*, 36 Cal. 4th 148 (2005), that classified most consumer class arbitration waivers as unconscionable. Many courts in other jurisdictions adopted similar holdings in recent years. See e.g., *In re nepp*, 229 B.R. 821 (N.D. Ala. 1999); *Shroyer v. New Cingular Wireless Servs., Inc.*, 498 F.3d 976 (9th Cir. 2007); *Whitney v. Alltel Comm'n, Inc.*, 173 S.W.3d 300 (Mo. Ct. App. 2005). Other courts disagreed and continued to give effect to consumer contract arbitration provisions containing class arbitration waivers. See, e.g., *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359 (11th Cir. 2005); *Stenzel v. Dell, Inc.*, 870 A.2d 133 (Me. 2005); *Iberia Credit Bureau, Inc. v. Cingular Wireless LLC*, 379 F.3d 159 (5th Cir. 2004).

In Wednesday's decision, the Supreme Court observed that the FAA was enacted in response to widespread judicial hostility to arbitration agreements, and mandates that arbitration agreements are valid and enforceable. When state law prohibits outright the arbitration of a particular type of claim, the "straightforward" conclusion is that the FAA displaces the conflicting state law. Even though the FAA's savings clause allows arbitration agreements to be invalidated by "generally applicable" contract formation defenses (9 U.S.C. §2), the Supreme Court emphasized that courts may not "rely on the uniqueness" of an arbitration agreement as the basis for finding it unconscionable. The Supreme Court held that the overarching purpose of the FAA is to ensure enforceability of arbitration agreements, and that requiring the availability of class-wide arbitration interferes with fundamental attributes of arbitration, creating a scheme in conflict with the FAA. Among other attributes, the Supreme Court noted that the arbitration favored by the FAA involves speedy, informal processes that "forgo the procedural rigors and appellate review in order to realize the benefits of private dispute resolution." In contrast, adjudicating class claims on behalf of absent parties requires Constitutionally-mandated procedural formalities that arbitration models are "poorly suited" to protect and adjudicate without appellate review.

While Wednesday's Supreme Court decision preempts any hard-and-fast rule against the enforceability of consumer contract arbitration provisions, the FAA's savings clause remains the law. Unconscionability will continue to be an available defense to the enforceability of individual arbitration provisions in consumer sales contracts. The *AT&T Mobility* decision breathes new life into motions to compel arbitration in consumer class actions but, in defense of those motions, plaintiff lawyers can be expected to compare and contrast against the consumer-friendly aspects of the dispute resolution provisions emphasized by the Supreme Court's decision.

For a copy of the full Supreme Court decision, please click [here](#).

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