

Alerts and Updates

Class Action Waivers Declared Enforceable By The U.S. Supreme Court

April 29, 2011

On April 27, 2011, the U.S. Supreme Court—in *AT&T Mobility v. Concepcion*¹—held that class action waivers in consumer contracts are enforceable under the Federal Arbitration Act. The Court's ruling is likely to have far-reaching consequences not only for class actions between consumers and companies, but also for class actions between employees and employers, and parties in similar relationships. In effect, the Court's decision may allow a company to enforce, throughout the United States, customer agreements that contain arbitration provisions waiving class actions.

The Concepcion case involved consumer-plaintiffs who contracted with AT&T for cellular phone service and the purchase of cell phones. The wireless service agreement between the parties included an arbitration provision and a class action waiver clause, which together required that any dispute between the parties be arbitrated on an individual basis (*i.e.*, no class actions). Despite the arbitration provision and class action waiver, the plaintiffs filed a lawsuit against AT&T in a California federal district court, seeking to pursue their claims as a class action. AT&T moved to compel the plaintiffs to submit their claims, individually, to arbitration pursuant to the parties' contract. The district court denied AT&T's motion, holding that the class action waiver provision of the arbitration agreement was unconscionable under California law, and that California's unconscionability law was not preempted by the Federal Arbitration Act. On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's decision. The U.S. Supreme Court overturned the ruling of the appellate court.

The question before the U.S. Supreme Court was whether the Federal Arbitration Act preempted rules created by states, such as California, that classified most class action arbitration waivers in consumer contracts as unconscionable. The Court, answered "yes," signaling a triumph for AT&T as well as all companies.

In its decision, the Court emphasized the liberal federal policy in favor of arbitration and that the Federal Arbitration Act requires courts to honor parties' contractual expectations. The Court noted that parties may agree to limit the issues subject to arbitration and also limit with whom they will arbitrate disputes. Against this backdrop, the Court held that the Federal Arbitration Act (FAA) preserves applicable contract defenses (*i.e.*, fraud, duress, etc.), but does not preserve state-law rules that stand as an obstacle to the accomplishment of its objectives. According to the Court, "When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA." Thus, the Court determined that state rules that require the availability of classwide arbitration interfere with the fundamental attributes of arbitration under the FAA. This decision put an end to state-law rules that prohibit bans on class action arbitrations under the FAA.

What This Means for Companies

Given the U.S. Supreme Court's ruling, companies may want to consider implementing an arbitration provision with a class action waiver into their contractual agreements with consumers, employees, shareholders, clients, etc.—to the extent they do not have such a provision already in place. Arbitration provisions with class action waivers are likely to result in significant time- and cost-savings to companies because they may be able to more effectively manage and minimize the risk of class action lawsuits.

With regard to the inclusion of class action arbitration waivers in employment agreements, companies should keep in mind that there are many federal employment statutes that could be interpreted to preclude such waivers and that would not be preempted by federal law, as was the California statute in issue in this case. Companies may want to review with legal counsel the scope of likely enforceability of class action waivers in employment agreements, along with the potential benefits and risks of incorporating them into arbitration agreements.

Companies that already use class action arbitration waivers in consumer contracts may want to review them with legal counsel to discuss how those provisions might be modified to address the changes in the law wrought by the Court.

For Further Information

If you have any questions about this *Alert*, please contact any [member](#) of the [Trial Practice Group](#), any [member](#) of the [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. *AT&T Mobility LLC v. Concepcion*, 2011 U.S. LEXIS 3367 (U.S. Apr. 27, 2011).

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