

Consumer Arbitration Ruling Suggests Employers Can Contract Around Class Arbitrations

In a narrow 5–4 decision, the United States Supreme Court recently clarified the reach of the Federal Arbitration Act (FAA) with respect to class-action lawsuits. In *AT&T Mobility LLC v. Concepcion*, 563 U.S. ____ (April 27, 2011), several individuals who had purchased AT&T services filed a purported class-action lawsuit, alleging that AT&T had engaged in false advertising and fraud. AT&T sought to enforce an arbitration provision in the sales and service contract which provided for arbitration of all disputes, but required claims to be brought in each party's individual capacity, and not as a plaintiff or class member in any purported class action. The plaintiffs argued that the arbitration provision was unenforceable under California law because it prohibited the use of class-wide arbitration.

The Supreme Court held that state laws requiring arbitration agreements to permit class-wide arbitration interfere with the "fundamental attributes of arbitration" and are preempted by the FAA. Class-action arbitration, the Court observed, differs dramatically from standard "bilateral" arbitration: the process is slower, more costly, and requires complicated procedural formalities, without which the risks of arbitration for large companies may be outweighed by the possibility of error.

This case is significant for employers who rely on arbitration provisions in employee contracts and wish to avoid potential high-stakes class-action litigation over wage and hour or discrimination disputes. The Supreme Court's decision suggests that the inclusion of an arbitration provision requiring employees to bring all claims in their individual capacity, rather than as part of a class or representative proceeding, will be enforced.

To read the full text of the opinion, please click here: <http://www.supremecourt.gov/opinions/10pdf/09-893.pdf>

If you have questions, please contact:

Mike Birrer
214.855.3113
mbirrer@ccsb.com

Angelina LaPenotiere
214.855.3095
alapenotiere@ccsb.com

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