

Class Action Legal Update

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United States Supreme Court Approves Enforcement of Waivers of Class-Wide Arbitration

On April 27, the United States Supreme Court issued its decision in *AT&T Mobility LLC v. Concepcion*. The Supreme Court held that the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA"), preempted a California law that invalidated class action arbitration waivers. The Court, in a 5-4 decision, overturned the Ninth Circuit's prior ruling striking down a class action waiver contained in AT&T Mobility's consumer arbitration agreements as unconscionable under California state law.

In this case, the Concepcions contracted for phone services and the purchase of new cell phones from AT&T Mobility through a wireless services agreement. The agreement included an arbitration provision requiring any dispute be arbitrated and a class action waiver clause. The Concepcions filed suit against AT&T Mobility, arguing that the company's practice of charging a sales tax on a cell phone advertised as "free" was fraudulent. The Concepcions' claim was joined to a putative class action alleging the same claims. AT&T Mobility moved to compel individual arbitration of the Concepcions' claims. The federal District Court, sitting in California, denied that motion, finding that the class action waiver was unconscionable under California law and further finding that the California unconscionability law was not preempted by the FAA. The Ninth Circuit affirmed.

The Supreme Court reversed the decision, finding that California's rule against class action waivers "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in drafting the FAA.

Delivering the opinion of the five justice majority in *AT&T Mobility*, Justice Scalia wrote, "Arbitration is poorly suited to the higher stakes of class litigation." This decision, in conjunction with the Supreme Court's recent decision in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. ___ (2010), could ultimately lead to the end of class-wide arbitration. In *Stolt-Nielsen*, the Court held that imposing class arbitration on parties who had not agreed to class arbitration conflicts with the FAA. These recent decisions highlight the Supreme Court's aversion for class-wide arbitration.

For businesses that prefer to resolve consumer, customer, employment or other types of disputes that could occur with large numbers of potential plaintiffs through arbitration, rather than expensive and cumbersome class litigation or even more unwieldy class arbitration, the decision is likely to be welcomed. Companies should review their business agreements and consult with experienced counsel to determine whether to modify arbitration provisions in light of the decision.

For more information, please contact the Class Action Defense or Labor and Employment Practice Groups at Lane Powell: lppc@lanepowell.com

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