

Reversing the Ninth Circuit, Supreme Court upholds right to arbitrate

February 24, 2012 by [Louis M. Solomon](#)

We have discussed various decisions by the Supreme Court, the federal Courts of Appeals, and an array of District Courts seeking to uphold private parties' freedom to contract with each other concerning the forum and law to govern their disputes, typically in the cases discussed here, their international. See for example our posting of [11/12/10](#), which analyzed the First Circuit's efforts in that regard.

By way of contrast, we posted ([here](#)) on a decision by the Ninth Circuit Court of Appeals, [Greenwood, et al. v. CompuCredit Corp. et al.](#), No. 09-15906 (9th Cir. 8/17/10), which also addressed the freedom of contract issue. *CompuCredit* involved claims by consumers under the Credit Repair Organization Act (CROA), in particular the rights granted to consumers in the disclosure section of the CROA, 15 U.S.C. 1679c. One of the rights provided: "You have the **right to sue** a credit repair organization that violates the" CROA (emphasis supplied). On the basis of that language, the Court of Appeals found that Congress had precluded the right of private parties to agree to arbitrate their disputes rather than having to litigate them in court.

The decision created a conflict with two other Courts of Appeals and, we said, was important in the context of international litigation, where parties frequently believe they have the right to determine for themselves whether to contract to arbitrate or initiate litigation in court to resolve any disputes. We were quietly skeptical of the Ninth Circuit's decision (admittedly no one asked our view before the decision came down).

Last month, the Supreme Court reversed the Ninth Circuit's decision. [Compucredit Corp. v. Greenwood](#), No. 10-948 (U.S. 2012). Held the Supreme Court, because the CROA was silent on whether claims under the Act can proceed in an arbitrable forum, the Federal Arbitration Act (FAA) requires the arbitration agreement to be enforced according to its terms.

First, the Supreme Court made clear that the FAA required courts to enforce agreements to arbitrate according to their terms, "even when the claims at issue are federal statutory claims, unless the FAA's mandate has been 'overridden by a contrary congressional command'".

Second, the Court found that the critical language of the statute, "You have the **right to sue** a credit repair organization that violates the" CROA, did not actually create a right to sue. Rather, the Court found that the language used was simply "a colloquial method of communicating to consumers that they have the legal right, enforceable in court, to recover damages from credit repair organizations that violate the CROA" and that most

consumers would understand it this way, “without regard to whether the suit in court has to be preceded by an arbitration proceeding”.

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