

# PUBLICATION

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## Will Arbitration Clauses Be The New Class-Action Prevention Tool?

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As a result of a recent United States Supreme Court decision, properly-worded arbitration clauses may help businesses avoid becoming defendants in class action lawsuits. On April 27, 2011, the Supreme Court issued *AT&T Mobility, Inc. v. Concepcion* and held that the Federal Arbitration Act (FAA) preempts certain state legislation and prohibits states from conditioning the enforceability of certain arbitration agreements on the availability of class-wide arbitration procedures.

### The Dispute

In *Concepcion*, the plaintiffs purchased a mobile telephone service, which was advertised as including free telephones. The plaintiffs were not charged for the telephones, but they were charged \$30.22 in sales tax based on the retail value of the telephones. The plaintiffs filed a complaint in federal district court challenging AT&T's collection of the sales tax. The complaint was later consolidated with a putative class action alleging, among other things, that AT&T had engaged in false advertising and fraud by charging sales tax on telephones it advertised as free.

### The Arbitration Agreement

The agreement for the sale and servicing of the telephones provided for arbitration of disputes between the parties, but required that the claims be brought in the parties' "individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding." AT&T moved to compel arbitration under the terms of the agreement. The plaintiffs opposed AT&T's motion to compel arbitration and argued that, under California law, the arbitration agreement was unconscionable and unlawfully exculpatory because it disallowed class-wide procedures. The district court denied AT&T's motion based on the California jurisprudence providing that the disallowance of class-wide procedures was unlawful. The Ninth Circuit affirmed the district court's denial.

### The Supreme Court's Opinion

In a 5-4 opinion overruling the Ninth Circuit's decision, the Supreme Court explained that the overarching purpose of the FAA is to ensure the enforcement of arbitration agreements according to their terms in order to facilitate streamlined proceedings. The Court stated that "requiring the availability of class-wide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." As such, state law requiring parties to insert specific provisions into their arbitration agreements violates the principals of the FAA, which requires courts to honor parties' expectations. The Court found that the FAA preempts state law that stands as an obstacle to the FAA's execution and full purpose.

### What This Means for You

Although the Court narrowly phrased the issue before it as "whether Section 2 of the FAA preempts California's rule classifying most collective-arbitration waivers in consumer contracts as unconscionable," its decision may ultimately limit class action litigation in disputes involving properly drafted arbitration agreements. To the extent the parties to an agreement (1) agree to arbitrate their dispute(s) and (2) limit the arbitration to the individual

parties to the agreement, as did the parties in Concepcion, parties may be able to avoid costly and time-consuming class action and/or class arbitration proceedings.

For more information, please contact your Baker Donelson attorney.