

October 27, 2009

Our Access to Justice Campaign, Mandatory Arbitration Abuse Prevention Project, and Class Action Preservation Project have just scored another major victory. After a long and complicated battle, the court just held in *Carideo v. Dell Inc.* that the computer company's mandatory arbitration clause and class action ban are "unenforceable."

This case should help consumers and lawyers across the country strike down Dell's and other companies' mandatory arbitration clauses and class action bans -- and obtain access to justice in court.



Here's the background. **The *Carideo* case, filed in U.S. District Court in Seattle, alleges that Dell laptops costing between \$1,300 and \$1,700 were defectively designed and manufactured. Dell moved to compel arbitration based on its mandatory arbitration clause, which provides that the National Arbitration Forum (NAF) will be the arbitrator and bans class actions.** Dell's form consumer contract also has a Texas choice-of-law provision, which Dell relies on in trying to enforce its mandatory arbitration clause and class action ban. **Plaintiffs opposed Dell's motion to compel arbitration, but, in June 2007, U.S. District Court Judge James L. Robart granted it, applying Texas law, staying the case, and compelling arbitration.**

In July 2007, however, Public Justice won *Scott v. Cingular Wireless* in the Washington Supreme Court, which struck down the cell phone company's class action ban. Based on that decision, plaintiffs then moved for relief from the district courts' order compelling arbitration. Judge Robart, however, did not find *Scott* controlling and again compelled arbitration.

Plaintiffs then petitioned the Ninth Circuit for a writ of mandamus and, while that was pending, Public Justice won *McKee v. AT&T* in the Washington Supreme Court, striking down the phone company's class action ban and holding that the company's New York choice-of-law provision was unenforceable because it violated Washington's "fundamental policy" of preserving access to justice for consumers with small dollar claims through class actions. The Ninth Circuit then remanded the decision to the district court for reconsideration in light of *McKee*.

After reconsideration was argued, the Attorney General of Minnesota filed suit against NAF (which Public Justice had been challenging as biased for years) and NAF quickly announced that it would no longer arbitrate consumer disputes. We then filed supplemental briefs explaining why that fact rendered Dell's mandatory arbitration clause and class action ban unenforceable.

In a decision that should have nationwide impact, the court agreed. After reviewing the changes in the law that prompted the Ninth Circuit to order reconsideration, **U.S. District Court Judge Robart held that "the parties' selection of NAF is integral to the arbitration clause," that "to appoint a substitute arbitrator would constitute a wholesale revision of the arbitration clause," and that Dell's class action ban could not survive "the failure of the arbitration clause."** He therefore, held that "the arbitration clause and the class action

waiver are unenforceable."

To read the decision in *Carideo*, [click here](#).

To read our brief on NAF, [click here](#).

To read our reply brief on the effect of *McKee*, [click here](#).

To read our opening brief on the effect of *McKee*, [click here](#).

Congratulations and thanks to Public Justice's Paul Bland, who argued the issue (and the *Scott* and *McKee* cases), Leslie Bailey, who wrote our briefs, and lead plaintiffs' counsel Beth E. Terrell, Toby J. Marshall, and Jennifer Rust Murray of Terrell Marshall & Daudt PLLC in Seattle.

Congratulations and thanks to you, too, for helping make this important victory possible. Together, we can and must keep fighting to preserve access to justice for all. - Arthur

Arthur Bryant
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and the Public Justice Foundation

P.S. Please forward this email to friends and colleagues who'd be interested. (When you do so, delete the information below about unsubscribing, or they could unsubscribe you.) To make a special contribution, renew your membership, or join us, please [click here](#).

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