

October 06, 2010

Public Justice has just filed an *amicus* brief urging the U.S. Supreme Court to reject arguments by the nation's largest cell phone corporation that the Federal Arbitration Act ("FAA") permits it to bar its customers from bringing a class action against it, even when a class action is the only way to stop widespread violations of state law. The case -- *AT&T Mobility v. Concepcion* -- arose when AT&T allegedly tricked California consumers by promising them discounted phones but then charging them for sales tax on the full, undiscounted price. AT&T tried to force the plaintiffs into individual arbitration, but a federal district court invalidated AT&T's class action ban on the ground that it is unconscionable under generally-applicable state contract law. The U.S. Court of Appeals for the Ninth Circuit agreed, and the Supreme Court granted *certiorari*.

We weighed in because AT&T argues that, despite the class action ban, its arbitration clause is "a realistic and effective dispute-resolution mechanism for consumers." But in *Coneff v. AT&T*, we fought the same AT&T class action ban at issue in *Concepcion* and proved AT&T wrong. Our *amicus* brief in *Concepcion*, filed on behalf of our clients in *Coneff*, lays out the facts: Of AT&T's over 70 million customers, only 170 had filed individual arbitrations. And although AT&T claims to have added various financial "premiums" to its clause to make individual arbitration attractive and beneficial for customers, AT&T's lawyer conceded that the company never actually pays out those premiums. The *Coneff* court also analyzed testimony from over 20 witnesses, including several consumer advocates who testified that individual class members would not be able to retain attorneys to represent them against AT&T. In the end, the court concluded that the evidence overwhelmingly demonstrated, as a factual matter, that AT&T's class action ban is exculpatory: It ensures that, even if the company cheats large numbers of customers in the same way, the vast majority of them will never hold AT&T liable no matter how valid their claims are. *Coneff* is one of many landmark victories our [Access to Justice Campaign](#) and [Class Action Preservation Project](#) have won striking down contract terms banning class actions under state law where those provisions would immunize corporations from consumer protection laws.



AT&T is now arguing to the U.S. Supreme Court that, so long as an individual customer who brings an individual arbitration has a chance at getting her money back, the class action ban in its contract must be enforced -- even if that means the company can continue cheating the other 99.9% of its customers. But as our brief explains, consumer protection laws are not designed merely to ensure that a handful of highly-motivated, resourceful consumers might get their money back; they are intended to stop and deter widespread violations of law. The radical rule proposed by AT&T and its corporate *amici* could effectively render some state consumer protection statutes a dead letter.

The plaintiffs in *AT&T v. Concepcion* are represented by Deepak Gupta of Public Citizen, who will argue the case November 9, 2010.

To read our *amicus* brief, [click here](#). The brief was written by Public Justice Staff Attorney Leslie Bailey with input from Senior Attorney Paul Bland, Budd-Kazan Fellow Matt Wessler, Brayton-

Thornton Fellow Melanie Hirsch, and me.

To read Public Justice Senior Attorney Paul Bland's article on the importance of the Concepcion case, [click here](#).

To read more about *Coneff v. AT&T*, [click here](#).

To read the highlights of our Class Action Preservation Project, [click here](#).

Thanks for making this important work possible. We must preserve access to justice for all.

Arthur Bryant
Executive Director
Public Justice and the
Public Justice Foundation

email: abryant@publicjustice.net

voice: 202-797-8600

web: <http://www.publicjustice.net>

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Public Justice | 1825 K Street, NW | Suite 200 | Washington | DC | 20006