

Friday, May 29

Our Access to Justice Campaign has just won a huge victory against AT&T (formerly Cingular) Wireless: a federal court decision that the company can't use a class action ban, mandatory arbitration and choice of law provisions in its form consumer contract, or federal preemption to avoid accountability for cheating its customers.

In *Coneff v. AT&T*, the U.S. District Court for the Western District of Washington rejected AT&T's argument that its contract allowed it to force its customers to bring their claims in individual arbitration proceedings. The court recognized that almost no customers would ever be able to hold the company accountable without a class action. **This decision adds to -- and builds on -- the enormous success of our Access to Justice Campaign fighting class action bans, mandatory arbitration, and federal preemption.**



The *Coneff* case was filed on behalf of AT&T Wireless customers nationwide who were harmed when AT&T Wireless merged with Cingular in 2004. When Cingular bought AT&T Wireless's cell phone system (and then changed the combined companies' name to AT&T), it promised federal regulators that the merger would be "seamless." But, the lawsuit contends, rather than improved service, AT&T Wireless customers were forced to transfer to Cingular's network or suffer poor to no reception as Cingular dismantled and degraded the AT&T network, at the cost of a higher monthly fee. Customers who did transfer to Cingular were hit with the costs of new equipment, higher-cost service plans, and "transfer" or "upgrade" fees. The number of consumers affected is unknown, but at the time of the merger, AT&T Wireless had over 20 million customers -- and in the weeks after the lawsuit was filed, Consumer Watchdog received complaints from more than 4,700 customers regarding the allegations in the complaint.

While the customers' claims are complex, and could add up to millions of dollars in the aggregate, the amount of money lost by any single AT&T customer is relatively small. And only a fraction of AT&T's customers has ever pursued claims against the corporation in individual arbitration. Therefore, as the court recognized, these customers' claims can only be pursued as a class action. Under the Washington Supreme Court's ruling in *Scott v. Cingular* (which Public Justice won in 2007), class action bans that allow corporations to avoid liability for cheating their customers are unenforceable.

AT&T argued that its class action ban was legal despite the Washington rule, because it contains various "premiums" and other "consumer-friendly" terms designed to make individual arbitration more attractive. AT&T also argued that Washington State's normal contract laws and consumer protection act could not be applied to its contract, because its contract designated the laws of other states that are less protective of consumers.

U.S. District Court Judge Ricardo Martinez saw through AT&T's arguments and held the class action ban "unconscionable" under Washington law. He found that that it would "effectively exculpate" the corporation from "any potential liability for unfair or deceptive acts or practices in commerce, conduct that is expressly barred by the the Washington Supreme Court." The court further recognized that permitting AT&T to avoid Washington law

would violate fundamental state policy and infringe on the state's strong interest in ensuring that its corporate citizens do not cheat consumers in other states.

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

To read our winning brief in *Coneff*, [click here](#).

Congratulations and thanks to Public Justice Staff Attorney Leslie Bailey, the lead author of the plaintiffs' brief; Public Justice Staff Attorney Paul Bland, who argued the case; and plaintiffs' lead counsel -- Harvey Rosenfield of Consumer Watchdog in Santa Monica; Paul Stritmatter and Kevin Coluccio of Stritmatter Kessler Whelan Coluccio in Seattle; Bruce Simon and Esther Klisura of Pearson, Simon, Warshaw & Penny.

Congratulations and thanks to you, too, for helping make this great victory possible. With your help, we will continue to fight for -- and preserve -- access to justice for all! - Arthur

Arthur Bryant
Executive Director
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& the Public Justice Foundation

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