

NEWS RELEASE

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FIRST CIRCUIT HOLDS EMPLOYERS CANNOT AVOID WORKER PROTECTION LAWS BY IMPOSING HIDDEN CLASS ACTION BANS

In a victory for Massachusetts workers, the U.S. Court of Appeals for the First Circuit ruled **Thursday** that **Dynamics Research Corporation cannot insulate itself from liability for violating state and federal labor laws by banning its employees from bringing class actions against the company.** The court held in *Skirchak v. Dynamics Research Corporation* that the company's class action ban, which was hidden in the appendix of an attachment to an e-mail sent to employees, was unconscionable and unenforceable.

Public Justice, the national public interest law firm based in Washington, DC, filed an *amicus curiae* brief arguing that a class action ban may prevent workers with valid wage-and-hour claims from having a meaningful chance of pursuing those claims, and urging the Court of Appeals to affirm the decision of the U.S. District Court for the District of Massachusetts.

“In its decision, the court recognized how important class actions are to the enforcement of statutory wage and hour protections,” said Public Justice cooperating counsel Elizabeth Ryan of Roddy Klein & Ryan, who co-authored the *amicus* brief. “Its refusal to enforce a class arbitration waiver, where it was effectively hidden from employees in the fine print of a message sent on the eve of a holiday, is a great victory for employees.”

Two days before the Thanksgiving holiday in 2003, employees of Dynamics Research Corporation (DRC) received a five-line email informing them of a new dispute resolution program. Although the attachment to the email clearly stated that the program “does not limit or change any substantive legal rights,” language buried 20 pages into a 33-page appendix to the attachment stated that the program eliminated workers’ rights to bring or participate in a class action against the company, and the last page provided that employees would accept the term by continuing their employment after December 1, 2003.

When two employees filed a lawsuit claiming that DRC had wrongly denied them overtime pay, the company tried to compel them to arbitrate their claims individually. The district court denied the motion.

In affirming the district court, the Court of Appeals held – as Public Justice urged – that the class action ban is unenforceable under Massachusetts contract law. The court emphasized that the “content, the obscurity, and the timing of the e-mail and the failure to require a response” had the effect of hiding the class action ban from employees. Under these circumstances, given

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Massachusetts’ “statutorily created interest in class actions,” the court held that the term cannot be enforced.

The case arose when DRC allegedly misclassified certain employees, including Mr. Skirchak, as “exempt” and thus not entitled to overtime pay. Because the unconscionable class action ban is severable from the remainder of the arbitration clause, the case can now proceed in arbitration on a class-wide basis.

Public Justice’s *amicus* brief was written by Ryan and John Roddy of Roddy Klein & Ryan with input from Public Justice attorneys Leslie Bailey and Paul Bland. The brief was filed as part of **Public Justice’s Access to Justice Campaign and Class Action Preservation Project.**

The Court of Appeals ruling in *Skirchak v. Dynamics Research Corporation* and the Public Justice brief in the case are posted at **www.publicjustice.net.**

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Public Justice (formerly Trial Lawyers for Public Justice), is America’s public interest law firm. Dedicated to using trial lawyers’ and other attorneys’ skills and resources to advance the public good, Public Justice is supported by – and can call on -- a nationwide network of more than 3,000 of the nation’s top lawyers to pursue precedent-setting and socially significant litigation. It has a wide-ranging litigation docket in the areas of consumer rights, worker safety, civil rights and liberties, toxic torts, environmental protection, and access to the courts. Public Justice is the principal project of the Public Justice Foundation, a not-for-profit membership organization headquartered in Washington, DC, with a West Coast office in Oakland, California. The Public Justice web site address is www.publicjustice.net.

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