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<u>Key Victory for Cell Phone Users</u>

Nationwide Lawsuit Against Cingular/AT&T for Overcharges, Poor Cell Phone Service May Proceed, Federal Court Rules

Court Rejects AT&T's Efforts to Bar Customers from Joining Together to Hold the Company Accountable in Court

Santa Monica, CA – A class action lawsuit charging that millions of cell phone users were misled and overcharged when Cingular merged with AT&T Wireless in 2004 may go forward, a federal court ruled on Tuesday.

In a victory for consumers nationwide, the U.S. District Court for the District of Washington in *Coneff v. AT&T* struck down a clause in AT&T's contract that the company argued allowed it to force its customers to bring their claims individually in arbitration proceedings, rather than in a class action in court. The District Court held that without a class action, the vast majority of AT&T's customers would never obtain justice—and for that reason refused to enforce the contract provision.

Cingular bought AT&T's cell phone system in October 2004, after assuring federal regulators that the merger would be "seamless." But, the lawsuit contends, instead of providing the new and improved services it promised AT&T customers, Cingular immediately began dismantling and degrading the AT&T network, forcing AT&T customers to move to Cingular's network. That meant buying new phone equipment, moving to higher cost plans, and, in some cases, an $18 "transfer" or "upgrade fee." Some customers who tried to go to another company were hit with "early termination fees" of $175. Others who didn't want to pay or couldn't afford the termination fees were stuck with riding out their contract with AT&T Wireless while suffering poor to no reception – and paying an extra monthly fee of $4.99. Cingular ultimately shut down the former AT&T network. Cingular later changed its corporate name to AT&T.

AT&T: Fine Print Bars the Lawsuit

The case was filed in Seattle, Washington in July 2006 on behalf of all original AT&T Wireless customers who were deceived or overcharged as a result of the merger. AT&T responded by asking the court to dismiss the case on the grounds that under a term buried in the fine print of its service contracts, customers are barred from bringing class actions and instead must fight the company one-on-one through arbitration. The customers argued that because their claims are individually small but complex, the class action ban would prevent them from holding the company accountable at all—a result not permitted in Washington, where AT&T was based at the time.

U.S. District Court Judge Ricardo Martinez agreed, striking down the arbitration clause as "unconscionable" under Washington law. He explained that the contract term would "effectively exculpate" the corporation from "any potential liability for unfair or deceptive acts or practices in commerce." "The Court will not condone such a broad and exculpatory practice," he added, emphasizing that the central purpose of class actions is to curb fraudulent business practices such as those alleged in this case.

The court also emphatically rejected AT&T's argument that the court should apply the laws of other states chosen by AT&T in its contract, even if those states' laws are less protective of consumers than Washington's and would permit AT&T to bar their residents from participating in the class action.

Decision a Victory for Consumers

"It stands to reason that if a company chooses to do business from the state of Washington, it can't use the fine print of its contract to give itself carte blanche when it violates Washington's strong consumer protection laws," said Leslie Bailey, a staff attorney with the national public interest law firm Public Justice. "Judge Martinez saw through AT&T's legal arguments to the injustice of what the corporation was trying to do here. This is an extremely well-reasoned decision, and is likely to be influential with other courts around the nation." Bailey and Public Justice staff attorney Paul Bland led the customers' fight to keep their case in court, and Bland argued the case before Judge Martinez.

"This is a major victory for AT&T customers all over the nation," said Harvey Rosenfield, a lawyer for the non-profit Consumer Watchdog, a California-based crusader for consumer rights. "The company broke its promise to its customers, making them pay millions of dollars more than they should have. Now we can move forward to get people their money back."

"It's been a long battle and there is still much work to be done," said Kevin Coluccio of the law firm of Stritmatter, Kessler, Whelan and Coluccio, based in Seattle. "But today's decision confirms that AT&T does not have the unlimited right to immunize itself from accountability under the law."

In addition to Rosenfield, Bland, Bailey and Coluccio, the plaintiffs are represented by Bruce Simon and Esther Klisura of Pearson, Simon, Warshaw and Penny; Paul Stritmatter of the Stritmatter firm, as well as several other nationally-recognized consumer advocates and law firms.

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