

The United States Supreme Court heard arguments in a key arbitration case on November 9, 2010. The case is AT&T Mobility v. Concepcion. The Supreme Court will decide whether the United States Court of Appeals for the Ninth Circuit correctly affirmed a lower court ruling which struck AT&T's arbitration clause because it did not allow for class-wide arbitration.

The case arose from a dispute about a phone advertised as "free." The Concepcions filed suit to recover \$30 in sales taxes they claim were unfairly charged in connection with the sale of the phone. The AT&T agreement contained an arbitration clause, which included a class waiver provision meaning that a consumer could not pursue a class action. When the Concepcions filed suit, AT&T moved to compel arbitration. The lower court ruled that the arbitration provision was invalid under California law because it did not allow for a class action. The Ninth Circuit affirmed that ruling. AT&T then appealed to the U.S. Supreme Court.

Under current law, an arbitration provision can be struck down pursuant to state-law contract defenses, such as unconscionability (i.e. an unfairly one-sided contract provision). The U.S. Supreme Court will decide whether the Federal Arbitration Act prevents states from imposing conditions, such as the availability of class arbitration, on the enforceability of an arbitration agreement. If the Supreme Court rules in favor of AT&T, it could well mean the end of consumer class actions. Businesses would be free to include in all customer agreements provisions requiring arbitration and preventing any class treatment of claims. Customers would then be forced to pursue claims on an individual basis in arbitration. As a result, the single biggest tool used by consumers to challenge unfair and deceptive business practices – a class action in which consumers can pull their resources and join their claims together – would be lost.

The **Bureau of National Affairs recently published an article** summarizing the parties' positions and the import of this case.