

The United States Supreme Court heard arguments in a key case that could dramatically limit consumers' ability to join together in class-action lawsuits. At issue in *AT&T Mobility v. Concepcion* is whether federal arbitration law trumps state laws that prohibit efforts to curb class-action suits. The case arose from a dispute over AT&T marketing a phone as "free," even though it tacked on over \$30 in sales tax based on the undiscounted cost of the phone. The customers brought suit to recover the \$30 and sought relief on behalf of all others who were also assessed with those costs.

AT&T moved to compel arbitration of the customers' dispute, arguing that the customers could not join their claim with others and had to pursue their claim on an individual basis. The consumers argued that the arbitration clause conflicted with California law, which would invalidate any arbitration agreement prohibiting class actions. The California law was designed to preserve the option of pursuing a class action in cases such as this, where the small amount of damages would likely prevent a consumer from seeking to vindicate his or her rights. As a practical matter, very few or no lawyers would take a case against AT&T to recover \$30. However, lawyers would have an incentive to accept such a case if it could be pursued as a class action and the lawyers could seek recovery of that same \$30 on behalf of a class of thousands of borrowers. Consumer advocates have long maintained that the class action device is a crucial weapon in helping consumers challenge unfair and deceptive trade practices.

The *AT&T Mobility v. Concepcion* case was heard at the Supreme Court on November 9, 2010. Several justices on the nine-member Court seemed skeptical of the arguments made by AT&T, which arguments conflict with the vast majority of lower court rulings on the issue. Justice Scalia asked dubiously: "Are we going to tell California what it has to consider unconscionable?" In a similar tone, Justice Sotomayor asked: "We have to serve as reviewers of state law?" These questions seemed to echo the decisions reached by a number of lower courts to the effect that state law controls the enforceability of contracts, including arbitration agreements.

Tony Mauro discussed the arguments in the AT&T Mobility case in his article '[Class Action on the ropes? Not likely](#)' which appeared in the National Law Journal.