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The United States Supreme Court recently agreed to hear a case in which the issue to be decided is whether companies may permissibly ban class actions in their "take-it-or-leave-it" contracts. The case is **AT&T Mobility v. Concepcion,** and it will be heard at the Supreme Court later this year. The question to be decided is whether the Federal Arbitration Act ("FAA") preempts rulings that particular class action bans are unconscionable under generally applicable state contract law.

The underlying case was brought by a group of California consumers against AT&T for imposing fraudulent charges for cell phone service. The customers' agreements with AT&T contained an arbitration provision which barred consumers from joining claims together or bringing a class action against AT&T. California state law precludes such a contractual waiver of the right to bring a class action claim. Accordingly, the Ninth Circuit Court of Appeals affirmed an order striking down the no-class action arbitration provision as unconscionable under California law. AT&T petitioned to the U.S. Supreme Court and the nation's high court recently agreed to hear the case. The issue to be decided is whether the FAA preempts states from conditioning the enforcement of an arbitration agreement on the availability of particular procedures, such as class-wide arbitration, when those procedures are purportedly not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims.

Consumer activists fear that a ruling in AT&T's favor will effectively be the death knell of consumer class actions. Companies would include class action bans in all customer agreements, thus requiring consumers to arbitrate disputes with the companies on an individual basis. Consumers would thus lose a powerful weapon for challenging unfair, deceptive, and overreaching business practices. There is, however, Supreme Court authority touting the benefits of class litigation with small-dollar claims, such as the ones asserted against AT&T. Consumers would be well-served if the Supreme Court embraces that precedent and holds that the FAA does not preempt state-law defenses to enforceability of arbitration clauses.