

United States Supreme Court Upholds Validity of Arbitration Agreements That Do Not Permit Class Action Litigation

Article By:

Mitchell W. Quick

Eric H. Rumbaugh

Thomas W. Scrivner

In a decision with potentially far-reaching implications in employment cases, on **April 27, 2011**, the United States Supreme Court, in [AT&T Mobility v. Concepcion](#) held that arbitration agreements that bar class claims are valid, and federal law preempts state laws that bar such agreements. Consequently, the potential usefulness of arbitration agreements in employment contracts – which has been uncertain in recent years – has now increased greatly. Employers can now have some confidence that they may avoid class litigation (such as discrimination and wage claims) through use of arbitration agreements.

In this case, AT&T maintained a contract with consumers pursuant to which disputes between AT&T and consumers would be resolved through a multi-step arbitration process. The arbitration clause did not permit class action claims. A consumer challenged AT&T's arbitration clause, claimed that it was "unconscionable" under California law, and therefore unenforceable. The **Federal Arbitration Act ("FAA") (9 U.S.C. § 2)**, provides as follows:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle arbitration a controversy thereafter arising out of such contract or transaction...shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Plaintiffs argued that AT&T's agreement was "unenforceable based on grounds which exist at law or in equity" in California for the revocation of such contracts. More specifically, Plaintiffs relied on the California Supreme Court case, *Discover Bank v. Superior Court*, 36 Cal. 4th 148, 113 P.3d 1100 (2005), which held that a class action waiver is invalid

"in a setting in which disputes between the contracting parties predictably involve small

amounts of damages, and when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small amounts of money...”

The Discover Bank Court declared such waivers unenforceable. *Id.* at 162.

In *AT&T Mobility*, the Supreme Court held that the FAA preempts California law, and the *Discover Bank* rule. AT&T’s arbitration clause was found enforceable, even though it effectively prohibits class action claims, notwithstanding the reasoning of the California Supreme Court in *Discover Bank*. The United States Supreme Court held that: “Requiring the availability of class wide arbitration interferes with the fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA,” as it made the process slower and more costly. Regarding the California law, the Supreme Court held: “California’s *Discover Bank* rule similarly interferes with arbitration.”

The usefulness of arbitration clauses in employment agreements has been widely debated in recent years. Such clauses were to have the supposed advantage of making litigation simpler, speedier, and less expensive. But arbitrators have added procedural elements to arbitration so that, now, arbitration might in some cases actually be slower, more cumbersome, and more expensive than court litigation

Furthermore, a major drawback to arbitration is that, for practical purposes, arbitration decisions are unappealable. The standard for judicial review of arbitration awards gives courts almost no chance to fix arbitrator errors, including on questions of law. These factors have led many employers not to utilize arbitration agreements.

The opportunity to avoid class action claims, however, likely alters the cost-benefit analysis. Arbitration still has significant limitations; but after *AT&T Mobility*, businesses will want to review existing arbitration agreements, and consider adding language to bar class action claims. Businesses not currently using arbitration agreements will want to reevaluate that decision now.

©2025 MICHAEL BEST & FRIEDRICH LLP

National Law Review, Volume I, Number 122

Source URL: <https://natlawreview.com/article/united-states-supreme-court-upholds-validity-arbitration-agreements-do-not-permit-class-acti>