Client Alert

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U.S. Supreme Court Ruling Upholds Arbitration Over Class Action Litigation

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SUPREME COURT UPHOLDS CLASS ARBITRATION WAIVERS

With its ruling on December 14, 2015, the Supreme Court continues to protect arbitration as a means of dispute resolution by cracking down on attempts to circumvent the Federal Arbitration Act ("FAA"). In *DIRECTV v. Imburgia*, the Supreme Court overturned the California Court of Appeal and held that California's law against class arbitration waivers does not invalidate arbitration clauses in agreements even if the governing law of the agreement references the California law. The decision flows from the 2011 Supreme Court ruling in *AT&T Mobility LLC v. Concepcion* that the FAA preempts California's protective laws against class arbitration waivers. 563 U.S. 333 (2011).

The decision sends the important message that the Supreme Court will not allow states to limit the scope of the FAA and will generally uphold the terms of an arbitration agreement, even if the arbitration agreement is between a large corporation and customer.

BACKGROUND OF THE CASE

Amy Imburgia filed a class action lawsuit in 2008 against DIRECTV in Los Angeles County Superior Court after the company charged her a series of termination fees. The DIRECTV Customer Agreement stated that it was governed by the FAA and included two clauses: 1) any legal claim would be resolved "only by binding arbitration" and 2) a class arbitration waiver. The class arbitration waiver notably included a non-severability clause, which stated that the entire section of the agreement discussing arbitration would be invalidated if the class arbitration waiver was unenforceable in the "law of your state." This meant that, as a practical matter, DIRECTV intended to arbitrate only if the customers agreed not to join together to form a class arbitration.

The "law of [Ms. Imburgia's] state" was California. At the time of the original lawsuit, California had a rule banning class arbitration waivers based on the California Supreme Court ruling in *Discover Bank v. Superior Court.* 36 Cal. 4th 148 (Cal. 2005). Plaintiffs therefore argued that the entire arbitration clause was invalidated under the law of Ms. Imburgia's state. On April 20, 2011, the Superior Court agreed and granted Plaintiffs' motion for class certification.

SUPREME COURT HELD IN *CONCEPCION* THAT THE FAA PREEMPTS STATE LAWS INVALIDATING CLASS ARBITRATION WAIVERS

On April 27, 2011, a few days after class certification was granted, the Supreme Court overturned *Discover Bank* and held that the FAA preempts California's rule invalidating class arbitration waivers. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). DIRECTV quickly moved to compel arbitration. The California court, however,

ruled in favor of the plaintiffs, and denied DIRECTV's motion to arbitrate the case, despite the recent U.S. Supreme Court decision in *Concepcion*. The California Court of Appeal affirmed, ruling that parties to a contract could freely choose California law as the governing law and that the Supreme Court's decision in *Concepcion* did not affect that choice.

SUPREME COURT RULES THAT "LAW OF YOUR STATE" IS NOT AMBIGUOUS

In denying DIRECTV's motion to compel arbitration based on the Supreme Court ruling in *Concepcion*, the Court of Appeal had reasoned that "law of your state" was an ambiguous provision that should be construed against the drafter. This allowed the court to interpret the agreement under California law with the ban against class arbitration waivers unhindered by *Concepcion*.

The U.S. Supreme Court disagreed and ruled that the "law of your state" is "not ambiguous and takes its ordinary meaning: valid state law." Valid state law following *Concepcion* would mean permitting class arbitration waivers. According to the Supreme Court, although parties to a contract have the freedom to choose a governing law, there was nothing in the DIRECTV agreement that suggested that it should be governed by an old law that had been ruled invalid by the U.S. Supreme Court in 2011.

Justice Ginsburg, in a dissent joined by Justice Sotomayor, argued that *Concepcion* did not invalidate *Discover Bank* protections. She interpreted "law of your state" to mean California law free of the FAA. She also observed that the increase in pro-arbitration rulings "have predictably resulted in the deprivation of consumers' rights to seek redress for losses, and, turning the coin, they have insulated powerful economic interests from liability for violations of consumer protection laws."

CONCLUSION

The recent ruling falls within the Supreme Court's trend of striking down restrictions on the use of arbitration. *See also Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304 (2013) (holding that a class arbitration waiver cannot be invalidated when the cost of individual arbitration exceeds the potential recovery). It remains to be seen whether the trend will continue when the Supreme Court examines whether the FAA preempts California's arbitration-only severability rule, which allows courts to nullify an arbitration clause in lieu of severing its unconscionable provisions. *Zaborowski v. MHN Gov't Servs., Inc.*, 601 F. Appx. 461 (9th Cir. 2014), *cert. granted*, 136 S. Ct. 27 (2015).

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