

Resources

Third Circuit Invalidates New Jersey Supreme Court Decision Requiring Arbitration of Claims on a Class-Wide Basis Under Supreme Court's Decision in *AT&T Mobility LLC v. Concepcion*

August 30, 2011

The favorable arbitration decisions keep rolling in.

The U.S. Court of Appeals for the Third Circuit, in *Litman v. Cellco Partnership* (2011 WL 3689015, Aug. 24, 2011), held based on Supreme Court precedent in *AT&T Mobility LLC v. Concepcion* (AT&T Mobility) that a New Jersey law deeming class arbitration waivers unconscionable was preempted by the Federal Arbitration Act (the FAA). Concluding that the required availability of class-wide arbitration "creates a scheme inconsistent with" the FAA, the Third Circuit affirmed a lower court's order compelling individual arbitration in accordance with the terms of the consumer's contract with Verizon.

The *Litman* decision—reversing a prior holding by the same court—was mandated by the U.S. Supreme Court's holding in *AT&T Mobility*, in which the Supreme Court held that the FAA requires enforcement of an arbitration clause unless grounds exist at law or in equity for the revocation of the contract and that state law rules that are an obstacle to the accomplishment of the FAA's objectives are preempted. In *AT&T Mobility*, the Supreme Court concluded, among other things, that class-wide arbitration is inconsistent with the FAA because it does not enforce the arbitration agreement according to its terms. Applying that reasoning to the facts in *Litman*, the Third Circuit similarly held that "the arbitration clause at issue here must be enforced according to its terms, which requires individual arbitration and forecloses class arbitration."

Rulings like *Litman* may provide only a short term boost for consumer arbitration. Whether or not the decisions will have a lasting impact will depend on the Consumer Financial Protection Bureau, which is studying the issue.

Should you have any questions about this decision or need additional information, please contact **Richard E. Gottlieb**, Director of the Firm's Financial Industry Group, at 312-627-2196, or **Arthur B. Axelson**, the author of this alert, at 202-906-8607.

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