Arnall Golden Gregory LLP

Client Alert

Contact Attorneys Regarding This Matter:

Jason E. Bring
404.873.8162 - direct
404.873.8163 - fax
jason.bring@agg.com

W. Jerad Rissler
404.873.8780 - direct
404.873.8781 - fax
jerad.rissler@agg.com

Eleventh Circuit Affirms Order Compelling Arbitration of Consumer Claims

The United States Court of Appeals for the Eleventh Circuit recently affirmed an order of the Middle District of Florida compelling claimants to pursue their claims in individual arbitrations rather than in a class action.[1] Although the facts in that case involved cell phone contracts, the court's holding should have equal applicability in the healthcare arena and thus represents another step forward in enforcing arbitration agreements between consumers and companies.

The plaintiffs, customers of AT&T Mobility, LLC, each signed a contract requiring any disputes with AT&T to be resolved through arbitration in an individual, rather than class, basis. Notwithstanding the arbitration agreement, the plaintiffs asserted consumer fraud claims under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA) against AT&T in federal court on a class basis. AT&T moved to compel arbitration of these claims, and the plaintiffs asserted that the prohibition against class action contained in the arbitration agreement rendered the agreement unenforceable "on the grounds that the class action waiver embedded in the provision hindered the remedial purposes of the FDUTPA by effectively immunizing AT&T from liability for unlawful business practices, in violation of public policy."[2] The district court enforced the arbitration agreement and compelled arbitration.

In its review of the district court decision, the Eleventh Circuit noted the strong policy in favor of arbitration as reflected in the Federal Arbitration Act (FAA). The Court noted that while "an arbitration agreement may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability," this "does not authorize the invalidation of agreements to arbitrate by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue."[3] The Eleventh Circuit further noted that the Supreme Court had "concluded that a state policy that allows any party to a consumer contract to demand classwide procedures *ex post*, in spite of her agreement to submit all disputes to bilateral arbitration is preempted by the FAA, even if it may be 'desirable for other reasons.'"[4]

1 *Cruz v. Cingular Wireless, LLC*, No. 08-16080 (11th Cir. Aug. 11, 2011)
2 *Cruz*, at 6
3 *Cruz*, at 11 (quoting *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011))
4 *Cruz*, at 14 (quoting *Concepcion*, 131 S. Ct. at 1750, 1753)

Arnall Golden Gregory LLP
Attorneys at Law

171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500

2001 Pennsylvania Avenue NW
Suite 250
Washington DC 20006
202.677.4030

www.agg.com

The plaintiffs argued that the prohibition against aggregation of the claims in a class proceeding would hinder the remedial purpose of the FDUTPA because a large number of claims would go unprosecuted. The plaintiffs noted that attorneys would be unwilling to prosecute these small-value claims unless they can be aggregated and that most consumers would be unaware that their rights had been violated without class-action notice procedures.[5]

The Eleventh Circuit observed that "the *Concepcion* Court specifically rejected this public policy argument, which was expressly made by the dissent in that case: 'The dissent claims that class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system. But States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons.'"[6] "Therefore, to the extent that Florida law would be sympathetic to the Plaintiffs' arguments here, and would invalidate the class waiver simply because the claims are of small value, the potential claims are numerous, and many consumers might not know about or pursue their potential claims absent class procedures, such a state policy stands as an obstacle to the FAA's objective of enforcing arbitration agreements according to their terms, and is preempted."[7] The court further noted that "the Plaintiffs here do not allege any defects in the formation of the contract, aside from its generally adhesive nature, which alone is insufficient to invalidate a consumer contract."[8] Accordingly, the court affirmed the district court's order compelling arbitration.

Arbitration has long been recognized as a fair and cost-effective method of resolving disputes, including those arising under federal statute. Thus, where the arbitration agreement merely requires resolution in an arbitral, rather than judicial forum, and does not preclude or limit the arbitrator's powers to award statutorily-available remedies, the arbitration agreement should be enforced by courts. Although some courts recently have refused to enforce arbitration agreements in healthcare claims on purported public policy grounds,[9] the Cruz decision adds to the long line of federal and state court decisions stating that the FAA prohibits states from refusing to enforce arbitration agreements according to their terms on public policy grounds, "even if it is desirable for unrelated reasons."[10]

Please click here for a copy of the *Cruz* decision.[11]

5 *Cruz*, at 15
6 *Cruz* (quoting *Concepcion*, 131 S. Ct. at 1753 (citation omitted))
7 *Cruz*, at 16
8 *Cruz*, at 22
9 See, e.g., *Brown v. Genesis Healthcare Corporation*, No. 35494 (W.V. June 29, 2011)
10 *Cruz*, at 15
11 http://www.ca11.uscourts.gov/opinions/ops/200816080.pdf