

FISHER PHILLIPS' SCOTT: WHAT SCOTUS' ARBITRATION RULING MEANS FOR LOCAL EMPLOYERS

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Tim Scott was quoted in *Biz New Orleans* on December 16, 2015. The article "What SCOTUS' Arbitration Ruling Means For Local Employers" provided take on what the ruling means for employers.

Tim said in a 6-3 decision, the U.S. Supreme Court ruled on December 14, 2015, in favor of the enforceability of arbitration clauses [DirecTV, Inc. v. Imburgia], once again communicating the court's enduring preference for the enforcement of arbitration provisions.

"Although Monday's decision did not specifically involve employment law, it should give a boost to those companies that choose to utilize arbitration agreements with their workforces," he said.

Tim said this case was first initiated in 2008, when Amy Imburgia filed a class action lawsuit against DirecTV on behalf of herself and other customers, alleging that the company had falsely advertised the nature of its early termination fees. She brought the class action in California state court, despite the fact her customer contract with DirecTV contained a mandatory arbitration clause.

The agreement said that the entire arbitration clause would be considered void "if the law of your state would find the agreement to dispense with class arbitration procedures unenforceable." And, at the time, Tim said California law did prohibit this type of mandatory arbitration. Under what was known as the Discover Bank rule, mandatory arbitration

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clauses were unenforceable if they effectively prohibited class-wide relief in consumer protection cases.

“Because of this rule, DirecTV elected not to pursue arbitration in Ms. Imburgia’s case,” Tim said. “However, while the case was being litigated, the U.S. Supreme Court issued its decision in *AT&T Mobility LLC v. Concepcion* (2011), essentially striking down California’s Discover Bank rule. In *Concepcion*, the Supreme Court held that California’s rule conflicted with, and was therefore preempted by, the Federal Arbitration Act (FAA)—a federal statute that strongly favors the enforceability of arbitration clauses.”

Tim said in reaction to this ruling, DirecTV asked the trial court to dismiss the pending class action and compel individual arbitration. It argued that its arbitration clause had been revived because the Discover Bank rule was no longer an enforceable doctrine.

But the trial court denied DirecTV’s motion, and the California Court of Appeal affirmed, reasoning that the language of the arbitration agreement showed that the parties wished to have California law control, regardless of whether that language would later be preempted by federal law. Scott said the case wound its way up to the U.S. Supreme Court, which issued its final ruling Monday.

He said the Court’s majority agreed with DirecTV, which had argued that the FAA gives federal courts power to ensure state court decisions do not frustrate the strong federal policy favoring arbitration. The Court held that the substantive requirements of the FAA are well-founded and that state court decisions cannot flout the essential tenets of the federal law.

In applying its ordinary rules of contract construction, Tim said the SCOTUS reiterated Monday that state courts must give due accord to the federal policy favoring arbitration. Justice Breyer, writing for the majority, stated that although California courts have the ultimate authority in interpreting state law, the federal courts have the authority under the FAA to “decide whether the decision of the California court places arbitration on equal footing with all other contracts.”

Applying this inquiry, the Court analyzed the California court’s method for interpreting the contract and found the state court’s interpretation of the contract’s reference to “law of your state” unreasonable on six different bases, Tim

said. Although federal courts will not typically review state court's interpretive methods, the Supreme Court determined that the state court failed to put the arbitration clause "on equal footing" with other contracts, and that the state court's hostility to arbitration was incompatible with the requirements of the FAA.

"The Court concluded that its decision was therefore preempted by federal law," Tim said. "In so concluding, the majority of Justices repeated that they did not intend to expand the existing Concepcion rule. Instead, the decision makes clear that today's ruling 'falls well within the confines of (and goes no further than) present well-established law.'"

Tim said Monday's decision is another clear victory for those employers who choose to enter into arbitration agreements with their workers. While Monday's decision does not specifically involve employment law, Scott said, it should shape the way businesses and employment attorneys think about and draft their employment contracts, particularly with respect to arbitration clauses.

He said you should give careful review to choice-of-law provisions to ensure that they specify the applicable law at issue and state whether that law will apply if it is later invalidated. Further, to avoid excessive litigation in state court, arbitration clauses should not refer to a state law at all unless you intend to incorporate the choice of governing law. The agreement should expressly state that any reasonable interpretation which would conclude the clause enforceable should be preferred over all other interpretations.

Tim said employment attorneys should also note that this decision offers an additional stage of review to challenge a state court decision invalidating a client's arbitration clause, if such a decision clearly contravenes pro-arbitration policies.

To read the full article, please visit [*Biz New Orleans*](#).