Federal Judge Strikes Down AT&T’s Mandatory Arbitration Provision

In previous issues of this Report, I have written about the suit filed in California by consumer lawyers, including Trial Lawyers for Public Justice, challenging the legality of a mandatory binding arbitration provision imposed last year by AT & T on all its long-distance customers. In an outstanding decision issued on January 15, 2002, a federal magistrate judge in Ting v. AT&T barred AT&T from trying to enforce its arbitration provision. The court found that AT&T, in inserting a broad new mandatory arbitration provision in its form long-distance customer agreement, had effectively tried to eliminate its long-distance customers’ rights by barring class actions, prohibiting punitive and other damages, and imposing excessive secrecy and costs. The court noted that “the terms and conditions of [AT&T’s contract] were imposed on the class members without an opportunity for negotiation, modification or waiver” and without any meaningful choice, given that long-distance carriers servicing two-thirds of the California market had similar binding arbitration provisions in their contracts. Relying on a detailed factual record, painstakingly compiled by plaintiffs’ counsel, the court held that AT&T’s ban on class actions would “prevent class members from effectively vindicating their rights in certain categories of claims,” serving to “shield AT&T from liability even in cases where it has violated the law.” The court found similarly troubling provisions that barred arbitrators from awarding punitive and other damages allowed under law, kept secret from consumers — but not from AT&T — the results in other arbitrations, and shortened the statutory time limit for filing claims. The evidence further convinced the court that in many situations, high arbitration costs would prevent class members from enforcing their rights.

The court’s conclusion highlights evils present in many binding arbitration provisions: “AT&T sought to shield itself from liability … by imposing Legal Remedies Provisions that eliminate class actions, sharply curtail damages in cases of misrepresentation, fraud and other intentional torts, cloak the arbitration process with secrecy and place significant financial hurdles in the path of a potential litigant. It is not just that AT&T wants to litigate in the forum of its choice — arbitration; it is that AT&T wants to make it very difficult for anyone to effectively vindicate her rights, even in that forum. That is illegal and unconscionable and must be enjoined.” Of course, the same thing can be said about many arbitration provisions that Alabama consumers are forced to sign every day to get a job, buy a car, take out a loan and enter into countless ordinary transactions. I only hope that the Alabama Supreme Court takes note of this extremely well-reasoned decision, and starts following that reasoning to slow the rush to mandatory binding arbitration in Alabama.