WEST VIRGINIA'S SUPREME COURT HOLDS THAT ARBITRATION CLAUSES CANNOT BE USED TO ELIMINATE CONSUMERS' RIGHTS

The West Virginia Supreme Court held last week that a retailer's mandatory arbitration clause was illegal and unenforceable because it would bar customers from participating in class actions or recovering punitive damages.

The Court's unanimous 42-page decision held that Friedman's Jewelers, a national jewelry retailer, was violating the law by inserting a mandatory arbitration clause into its form contract with customers as a "scheme or mechanism to shield itself from legal accountability for misconduct."

(Trial Lawyers for Public Justice (TLPJ) filed an amicus brief urging the Court to rule as it did.

"This decision should send a powerful message to businesses that are using mandatory arbitration systems to try to avoid liability for their wrongdoing," said TLPI attorney Michael J. Quirk, co-counsel on TLPI's amicus brief. "Mandatory arbitration provisions will not be enforced if they prevent consumers from effectively vindicating all of their rights and claims."

The case, State of West Virginia ex rel. Dunlap v. Honorable Irene C. Berger, Judge of the Circuit Court of Kanawha County, and Friedman's, Inc., was filed as a consumer class action challenging an alleged "loan packing" scheme in which Friedman's was adding unnecessary and undisclosed insurance charges to the price of jewelry bought on installment by low income customers.

In response to the customers' class action complaint, Friedman's moved to have the case ordered into private arbitration based on a provision in its installment sales contract.

The arbitration clause contained a one-sided provision that would have forced customers to arbitrate any of their claims, but would have permitted the company to sue customers for its own claims.

"Friedman's stacked the deck against its customers by designing an arbitration system that drastically limited the relief available to customers, and then exempting its own claims from this unfair system," said John W. Barrett of the Barrett Law Firm in Charleston, West Virginia, co-counsel for the successful plaintiffs. "The Supreme Court of Appeals was absolutely right to rule that this arbitration requirement was unconscionable. Friedman's was wrong to use an arbitration clause to shield itself from legal accountability."

The Court's opinion focused on the fact that Friedman's arbitration provision was part of a contract of adhesion -- a grossly imbalanced contract tilted in favor of the company -- presented to customers on a non-negotiable basis.

Under West Virginia's Consumer Credit Protection Act and controlling precedent, the court held that exculpatory provisions in contracts of adhesion are generally unconscionable and may be enforced only in rare circumstances. In examining the terms of the arbitration clause, the Court held that its prohibitions on punitive damages and class action relief were exculpatory in nature and therefore were "clearly unconscionable."