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### The United States of Consumer Arbitration? Not So Fast, Says 2nd Cir.

Posted by Nathan Koppel

The Second Circuit today waded into a topic that has riled the consumer-law community: the extent to which companies can keep peeved customers from filing class actions.

It's not a new issue: For years, companies in many industries — automotive, cell phones, computers — have required customers to agree to arbitrate their disputes and to waive their right to pursue claims on a class-wide basis.

Consumer advocates argue that this is totally bogus (to borrow a technical term), that a lot of people lack the financial means to pursue claims unless they can do so on a class basis.

The Circuit today struck down an arbitration clause drafted by American Express that banned any type of class litigation. The ban, according to the court, would have made it impossible for plaintiffs to pursue their antitrust claims against AmEx.

[Here's](#) a copy of the ruling and [here's](#) a report on the decision from Public Citizen's Consumer Law & Policy Blog.

Other courts, though, have gone the other way. [Here](#) is a posting yesterday from the ADR prof blog about a federal judge in New Jersey who upheld a Verizon Wireless class-action waiver, all the while acknowledging that the holding would kill the Verizon customer's claim.

In a WSJ article last year on the topic (link unavailable), F. Paul Bland Jr., a lawyer with Public Justice, said "the enforceability of class-action bans is the most important and most hotly contested issue in consumer law."