

7-1-2012

Dean's Welcome

Phillip J. McConnaughay

Follow this and additional works at: <http://elibrary.law.psu.edu/arbitrationlawreview>



Part of the [Dispute Resolution and Arbitration Commons](#)

Recommended Citation

Phillip J. McConnaughay, *Dean's Welcome*, 4 1 (2012).

This Symposium is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Arbitration Law Review by an authorized editor of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

**SYMPOSIUM: U.S. ARBITRATION LAW IN THE WAKE OF
AT&T MOBILITY V. CONCEPCION**

INTRODUCTION

Dean Philip McConnaughay*

Welcome everyone. I would like to commend the editors of the *Yearbook on Arbitration and Mediation* on their choice of topic for today's symposium: "*U.S. Arbitration Law in the Wake of AT&T Mobility v. Concepcion*." Jean Sternlight has written that the *Concepcion* case represents a "tsunami" with policy implications that, if not curtailed, will substantially harm consumers, employees, and perhaps others by permitting companies to use arbitration clauses to exempt themselves from class actions – thereby giving them free rein to engage in fraud, torts, discrimination, and other harmful acts.¹ *The Columbia Business Law Review* published an article with a slightly different take on the case. It was entitled "Much Ado About Nothing."² It noted that most attempts to remedy serious corporate injury, e.g., tobacco, asbestos, defective pharmaceuticals and the like, don't depend on a contractual relationship with the corporation in question, and hence won't be affected by class action waiver clauses. Most of the headlines since *Concepcion* seem to side with Professor Sternlight. One read, "The Corporate Court Does It Again."³ Another asked, "Has Consumer Protection Law Been Completely Preempted?"⁴ Many more proclaim the end of class actions as we know them. Nonetheless, in one of the first post-*Concepcion* decisions by an official body, the NLRB surprised many observers by declaring, despite *Concepcion*, that a class action waiver in the context of a collective bargaining agreement is an unfair labor practice and not enforceable. Many wonder whether the new Federal Consumer Financial Protection Bureau will join the NLRB in issue regulations limiting the predicted effects of *Concepcion* with respect to consumers.

It is fitting that the organizers of today's symposium have dedicated this symposium to the memory of Columbia Law School Professor Hans Smit, who passed away last month after a distinguished career as one of the world's leading scholars of International Commercial Arbitration and who would have reveled in the task of predicting the effects of *Concepcion*. Professor Smit's contributions to the law of procedure, the law of the European Union, and the law and practice of arbitration, are legendary. We are very proud at Penn State that the name of one of our leading arbitration scholars, Tom Carbonneau, appears with Professor Smit on the bindings of the exceptional treatises and compilations on which they collaborated.

* Dean, and Donald J. Farage Professor of Law, Penn State Dickinson School of Law.

¹ Jean R. Sternlight, *Tsunami: AT&T Mobility LLC v. Concepcion Impedes Access to Justice*, 90 OR. L. REV 703, 704 (2012).

² Alessandro Presti, *AT&T Mobility v. Concepcion: End of Class Litigation as We Know It? Or Much Ado About Nothing?*, COLUM. BUS. L. REV. ONLINE (May 9, 2011, 3:57 p.m.), <http://cblr.columbia.edu/archives/11739>.

³ Nan Aron, *AT&T Mobility: The Corporate Court Does it Again*, HUFFINGTON POST (Apr. 29, 2011, 11:46 a.m.), http://www.huffingtonpost.com/nan-aron/att-mobility-v-concepcion_b_855161.html.

⁴ Mike Appleton, *AT&T Mobility v. Concepcion: Has Consumer Protection Law Been Preempted?*, JONATHAN TURLEY: RES IPSA LOQUITUR ("THE THING ITSELF SPEAKS") (Jul. 3, 2011, 11:20 p.m.), <http://jonathanturley.org/2011/07/03/att-mobility-v-concepcion-has-consumer-protection-law-been-preempted/>.

Today's speakers and panelists also are among the world's leading scholars and practitioners of arbitration. I have the privilege of introducing the Symposium's keynote speaker. John Feerick is the Norris Professor of Law and Dean Emeritus of the Fordham University School of Law. He is renowned as an arbitrator and mediator, and has served as both for the NFL, the NBA, and the Jacob Javits Convention Center. He is a former President of the New York City Bar, a former Chairman of the Board of the American Arbitration Association, a former Chair of the New York State Commission on Government Integrity, a former Chair of the New York Commission on Judicial Elections, and a former Partner of Skadden, Arps, Slate, Meagher & Flom. His book on the 25th Amendment to the United States Constitution,⁵ an amendment that he helped to draft, was nominated for a Pulitzer Prize. He is a recipient of the American Bar Association's D'Alemberte/Raven Award for outstanding service in Dispute Resolution. And he is a recipient of the ABA's Robert J. Kutak Award for his exceptionally distinguished contributions to promoting cooperation between legal education, the practicing bar, and the judiciary. Please join me in welcoming Professor John Feerick.

⁵ JOHN D. FEERICK, *THE TWENTY-FIFTH AMENDMENT: ITS COMPLETE HISTORY AND APPLICATIONS* (Fordham Univ. Press 1992).