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ARKANSAS SUPREME COURT HOLDS INVALID ARBITRATION AGREEMENT FOR LACK OF MUTUALITY

By
Nathaniel Conti*

I. INTRODUCTION

In *Alltel Corp. v. Rosenow*, the Arkansas Supreme Court held a contract between Alltel Corporation ("Alltel") and its customers that contained an arbitration provision was unenforceable because the contract lacked mutuality.[1] The Court reasoned because Alltel was the only party that was able to pursue judicial remedies without waiving its rights under the contract, there was no mutuality between the parties. As such, the contract could not be enforced according to the Court.[2] Additionally, while Alltel challenged this on the premise that it violated *AT&T Mobility v. Concepcion* because Arkansas law only required mutuality in contracts for arbitration, the Arkansas Supreme Court disagreed, noting that mutuality in contracts was a requirement for every contract in Arkansas, not merely for arbitration agreements and therefore met the requirements of *Concepcion*.[3] The Court's decision in *Alltel* represents one of the first attempts by a state supreme court to distinguish and limit *Concepcion* in order to provide some protection to consumers. It should be noted, however, that the Court failed to consider the United States Supreme Court decisions in *Prima Paint Corp. v. Flood & Conklin Mfg. Co* and *Prima Paint's* progeny of cases in its discussion. Thus, its ultimate holding directly conflicts with *Prima Paint* precedent and must be viewed as a decision that incorrectly limits the arbitration process in contradiction of Supreme Court precedent.

II. BACKGROUND

The dispute arose when Peter Rosenow, an Alltel customer, filed a complaint against the company for allegedly violating the Arkansas Deceptive Trade Practices Act.[4] Rosenow additionally alleged the corporation was unjustly enriched by its practice of imposing early termination fees on cellular phone customers.[5] Rosenow plead the claims as part of a class-action suit against Alltel, but the circuit court denied Rosenow's petition

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[1] Alltel Corp. v. Rosenow, 2014 Ark. 375, 2014 Ark. LEXIS 492, *# (Ark. 2014).

[2] *Id.* at *17.

[3] *Id.* at *16-17.

[4] *Id.* at *2.

[5] *Id.*

for class certification.[6] This decision was appealed to the Arkansas Supreme Court who reversed and remanded the case back to the circuit court.[7] On remand, the circuit court then approved of the class certification brought by Rosenow.[8]

In response to the approved certification, Alltel moved to exclude any of its customers that were currently or had been subject to and bound by an arbitration provision within Alltel's customer contracts.[9] Rosenow opposed the motion, and argued that Alltel had already waived consideration of the arbitration provision because it failed to previously raise the issue.[10] After a hearing, the circuit court decided to deny Alltel's motion and the litigation between the two parties continued.[11]

Approximately two months afterwards, Alltel filed a new motion to compel arbitration among any of the class members who were customers of Alltel on or after May 1, 2004.[12] Alltel claimed that this motion was justified because its "Terms and Conditions" agreed to with customers included an arbitration clause that stated all disputes between Alltel and the customer would be arbitrated.[13] Additionally, Alltel claimed that the corporation's procedures were designed to ensure each customer was provided with adequate notice of the corporation's "Terms and Conditions" including the arbitration provision.[14] Alltel provided affidavits from employees along with exhibits that demonstrated the terms and conditions provided to Alltel customers.[15]

In opposition to this new motion, Rosenow first argued that Alltel had waived arbitration in the class-action litigation.[16] Second, Rosenow argued that Alltel's motion failed to show specific evidence from which it could be inferred that Alltel customers had notice and assented to the terms and conditions including the arbitration provision.[17] Third, Rosenow argued that the agreement between Alltel and its customers was invalid

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[6] Alltel Corp.¸2014 Ark. LEXIS 492, at *2.

[7] *Id*.

[8] *Id*.

[9] *Id.*

[10] *Id.*

[11] Alltel Corp.¸2014 Ark. LEXIS 492, at *2.

[12] *Id.* at *2-3.

[13] *Id.* at *3.

[14] *Id*.

[15] *Id*.

[16] Alltel Corp.¸2014 Ark. LEXIS 492, at *3.

[17] *Id.* at *2.

due to a lack of mutuality.[18] Finally, Rosenow argued that the terms and conditions of the Alltel contract along with the arbitration clause were unconscionable.[19]

The circuit court ultimately refused to enforce the motion to compel arbitration because it found the agreement lacked mutuality between the parties, a holding not based upon the *Concepcion* decision.[20] Alltel then petitioned to the Arkansas Supreme Court to reverse the circuit court's decision to refuse to enforce the arbitration provision.[21]

Before the Arkansas Supreme Court, Alltel presented numerous arguments in order to overturn the Lower Court's decision. First, Alltel argued that the contract between Alltel and its customers was mutual and unambiguous on its own.[22] Alltel argued that both parties were bound to arbitrate any disputes and that the agreement did not allow for Alltel to pursue a judicial remedy while not allowing a customer to do the same.[23] Additionally, Alltel argued that the Circuit Court erred by considering parol evidence to determine mutuality because the agreement was unambiguous.[24] Furthermore, Alltel contended that even if parol evidence should have been considered, the evidence that was considered, whether Alltel sued its customers in 2001 or 2002, was not relevant in determining if there was mutuality in the 2004 agreement.[25] Alltel claimed that this evidence was not relevant specifically because under the agreement both Alltel and its customers were permitted to use non-judicial self-help remedies to resolve disputes.[26] Finally, Alltel claimed that the precedent of Arkansas, which required that an arbitration agreement have independent mutuality, should be overturned for violating the Federal Arbitration Act ("FAA") because Arkansas law did not require independent mutuality for other contracts.[27]

In opposition to Alltel's arguments, Rosenow first argued that Alltel had already failed to prove the existence of an agreement to arbitrate between the parties.[28] Additionally, Rosenow argued that the terms and conditions of the agreement lacked

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[18] Alltel Corp., 2014 Ark. LEXIS 492, at *3.

[19] *Id.*

[20] *Id.* at *4.

[21] *Id.* at *5.

[22] *Id.* at *6.

[23] Alltel Corp., 2014 Ark. LEXIS 492, at *6.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.* at *6-7.

[28] Alltel Corp., 2014 Ark. LEXIS 492, at *7.

mutuality "because Alltel's customers can be held liable for outstanding service and equipment charges, taxes, fees, and surcharges, as well as Alltel's costs and fees incurred to collect unpaid balances, but Alltel's liability cannot exceed a customer's prorated monthly recurring service charge, and Alltel is not liable for any incidental, special, or punitive damages, or attorney's fees."[29] Rosenow also argued that the agreement lacked mutuality because Alltel had previously brought judicial suits against its customers without attempting to enforce the arbitration agreement.[30] Specifically responding to Alltel's parol evidence arguments, Rosenow asserted that Alltel failed to raise the argument at the Lower Court and therefore could not raise the argument before the Arkansas Supreme Court and that regardless of this fact, the parol evidence rule did not apply to explain course of performance.[31] Finally, in response to Alltel's argument that the Court's precedent violated the FAA, Rosenow argued that the Court had consistently held that all contracts, not merely agreements to arbitrate, required mutuality.[32]

III. COURT'S ANALYSIS

The Arkansas Supreme Court began its analysis by declaring that it reviewed the Lower Court's decision to deny a motion to compel arbitration *de novo*.[33] The Court stated that the threshold question was whether there existed a valid agreement to arbitrate between the parties.[34] The Court acknowledged that the arbitration provision was subject to the FAA, but also stated that it would look to state contract law to determine if the agreement to arbitrate was valid.[35] The Court, however, also acknowledged that state law could apply "to arbitration agreements only to the extent that it applies to contracts in general."[36]

In order to determine if the arbitration agreement was valid, the Court noted that the rules of construction and interpretation used for regular agreements also applied to arbitration agreements.[37] Therefore, the Court acknowledged five essential elements that

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[29] Alltel Corp., 2014 Ark. LEXIS 492, at *7.

[30] *Id*.

[31] *Id*. at *7-8.

[32] *Id*. at *8.

[33] *Id*.

[34] Alltel Corp., 2014 Ark. LEXIS 492, at *9.

[35] *Id*.

[36] *Id*.

[37] *Id*.

must be found within the arbitration agreement for it to be valid.[38] The Court stated that these elements were: "(1) competent parties, (2) subject matter, (3) legal consideration, (4) mutual agreement, and (5) mutual obligation."[39] In addition, the Court noted that it would, as a matter of law, determine the legal effect and construction of the agreement to arbitrate between the parties.[40]

When examining the five elements, the Arkansas Supreme Court began with the mutuality element. The Court first recognized that the Lower Court determined the agreement lacked mutuality and the Arkansas Supreme Court has held arbitration agreements lacking mutuality are invalid and unenforceable.[41] Therefore, the Court stated that they had to determine if the Lower Court properly applied Arkansas law regarding mutuality in contracts.[42] According to the Court, "mutuality of contract means that an obligation must rest on each party to do or permit to be done something in consideration of the act or promise of the other; thus, neither party is bound unless both are bound."[43] Therefore, any contract that provided only one of the parties an option of whether or not to perform would not be considered binding by the Court.[44]

The Court then acknowledged according to Alltel there was only one possible interpretation to the agreement- both parties were obligated to arbitrate any dispute.[45] And, the Court admitted that upon first glance, Alltel's argument was persuasive based upon an examination of the arbitration provision itself, as it did not contain an express reservation for Alltel:

> Any dispute arising out of this Agreement or relating to the Services and Equipment must be settled by arbitration administered by the American Arbitration Association, using the Wireless Industry Arbitration Rules. Information regarding this procedure may be found at www.adr.org. Each party will bear the cost of preparing and prosecuting its case. We will reimburse you for any filing or hearing fees to the extent they exceed what your court costs would have been if your claim had been resolved in a state court having jurisdiction. The arbitrator has no power or authority to alter or modify the [or this] Agreement or any [or these] Terms and Conditions, including the foregoing Limitation of Liability section. All

[38] Alltel Corp., 2014 Ark. LEXIS 492, at *9.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*. at *9-10.

[43] Alltel Corp., 2014 Ark. LEXIS 492, at *10.

[44] *Id*.

[45] *Id*.

> claims must be arbitrated individually, and there will be no consolidation or class treatment of any claims. This provision is subject to the Federal Arbitration Act.[46]

The Court noted, however, that prior to the arbitration provision, the terms and conditions of the agreement also contained the following provision, "[i]f we do not enforce any right or remedy available under this Agreement, that failure is not a waiver."[47] The Court stated they previously held that mutuality was lacking in an agreement when one party could use the agreement in a certain way, such as electing to pursue or not pursue judicial remedies while the other party could not do the same.[48]

The Court determined that based upon the above provision, Alltel had clearly reserved for itself the power to pursue judicial remedies without suffering the penalty of waiver.[49] Further, the Court noted that it was clear that Alltel alone held this right because the agreement did not provide Alltel's customers the same rights.[50] The Court explained that it had held arbitration provisions to be invalid for lack of mutuality when a provision within a contract conflicts with the arbitration provision and a court is unable to reconcile the two provisions.[51] The Court further reasoned that in the instant case, only Alltel was able to reject arbitration if it desired, and that it was clear the parties were treated differently by the contract.[52] Therefore, the Court found the arbitration provision to be invalid for lack of mutuality and affirmed the Lower Court's decision to deny the motion to compel arbitration.[53]

The Court next examined Alltel's argument that Arkansas law violated the FAA. The Court explained that Alltel believed the precedent violated the FAA because the law in Arkansas did not require independent mutuality for any contracts other than arbitration agreements, and that such disfavor for arbitration agreements would violate the FAA.[54]

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[46] Alltel Corp., 2014 Ark. LEXIS 492, at *10-11 (quoting from the disputed arbitration clause).

[47] Id at *11. *See also* Alltel Corp., 2014 Ark. LEXIS 492, at *11 n. 4 (explaining that the Arkansas Supreme Court had in the past, rejected a challenge that it was an error to consider another provision in a contract that was outside of the arbitration when determining if an arbitration provision met the mutuality requirement necessary to be valid.

[48] *Id.* at *12.

[49] *Id.*

[50] *Id*.

[51] Alltel Corp., 2014 Ark. LEXIS 492, at *12-13.

[52] *Id.* at *13.

[53] *Id*. Because the Court affirmed the lower court's finding of a lack of mutuality, the Court determined that they did not need to address Alltel's parol evidence argument. *See Alltel Corp.*, 2014 Ark. LEXIS 492, at *13.

[54] *Id.* at *14.

The Arkansas Supreme Court, however, disagreed with this position.[55] The Court noted that the United States Supreme Court has allowed for state law to be applied as long as "that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally."[56] The Court stated that what it was forbidden from doing was invalidating an arbitration agreement based on a state law that applied only to an arbitration provision.[57]

After determining the appropriate United States Supreme Court precedent, the Court distinguished the present case from past Supreme Court cases. The Court explained in *Casarotto*, the Supreme Court held that the FAA supplanted a Montana statute because the Montana statute made the enforcement of arbitration agreements contingent upon "compliance with a special notice requirement not applicable to contracts generally."[58] The Court determined that this requirement, which was specific to arbitration, was in contrast to Arkansas law which applied to every contract.[59] Additionally, the Court distinguished the present case from the Supreme Court's recent decision in *AT&T Mobility, LLC v. Concepcion*. The Court noted in *Concepcion*, the Supreme Court considered whether the FAA preempted a California rule of law that held "most collective-arbitration waivers in consumer contracts as unconscionable."[60] The Court explained that in *Concepcion* the Supreme Court found while "unconscionability was a generally applicable contract defense that could invalidate an arbitration agreement, California's rule of law '[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA.'"[61] In contrast, the approach taken in Arkansas, as explained by the Court, was to examine the agreement for mutuality and this was valid because it was the same approach that would be taken with any contract made within the state regardless of whether it involved arbitration.[62]

Furthermore, the Court noted that to further both the fundamental policy in favor of arbitration, and the principle that arbitration is a matter of contract, the Court "must place arbitration agreements on an equal footing with other contracts."[63] Thus, the Court

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[55] Alltel Corp., 2014 Ark. LEXIS 492, at 14.

[56] *Id.* (quoting Doctor's Assocs. v. Casarotto, 517 U.S. 681, 686-687 (1996)).

[57] *Id.* at *15, quoting Casarotto at 686-687.

[58] *Id.*, quoting Casarotto at 687.

[59] Alltel Corp., 2014 Ark. LEXIS 492, at *15.

[60] *Id.* at *16, quoting AT&T Mobility v. Concepcion, 131 S.Ct. 1740 at 1746 (2011).

[61] *Id.*, quoting Concepcion at 1748.

[62] *Id.*

[63] *Id.* at*16, quoting Concepcion at 1748 (quoting Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983); Rent-A-Center, West, Inc. v. Jackson, 561 U.S. 63, 67, (2010)) and (citing Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, (2006)).

reasoned that it would run afoul of its mandate from the Supreme Court by failing to consider mutuality or other contract principles when determining if a valid arbitration agreement existed because it would be treating an agreement to arbitrate differently from other contracts.[64] Refusing to take this stance, the Court rejected Alltel's argument.[65] Last, the Court declined to address Alltel's argument that the Lower Court erred by failing to enforce the arbitration provision, and also declined to address Rosenow's arguments that were no longer necessary because it accepted the Lower Court's determination that the agreement lacked mutuality.[66]

IV. SIGNIFICANCE

Alltel Corp v. Rosenow is significant as it represents one of the first attempts by a state supreme court to push back against and distinguish the United States Supreme Court's decision in *AT&T Mobility v. Concepcion*.[67] It is clear that in at least some states, courts may attempt to depart from *Concepcion* in an attempt to protect consumers who enter into unilateral arbitration agreements; courts will either apply the doctrine of mutuality, as was the case here, or require that a judicial waiver be unambiguous in an arbitration provision, as did another court in New Jersey.[68] Should other courts attempt to take a similar path as the Arkansas Supreme Court did in this case, then the court will have to ensure the compliance of the requirements of *Concepcion*, that state law must be applied to arbitration agreements as it would generally be applied to all other contracts.[69] So long as this requirement is met, courts should be able to invalidate an arbitration provision finding that it runs afoul of state contract law.

Additionally, for practitioners and parties who have agreed to arbitration in Arkansas, *Alltel Corp* will likely result in increased litigation of agreements to arbitrate. Many arbitration agreements will now likely be challenged for lack of mutuality, particularly those arbitration agreements that are similar to the one found in this case. As

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[64] Alltel Corp., 2014 Ark. LEXIS 492, at *16-17.

[65] *Id.* at *17.

[66] *Id.* at *18.

[67] The New Jersey Supreme Court has also recently attempted to distinguish a case from AT&T Mobility v. Concepcion in Atalese v. United States Legal Servs. Grp., L.P., 99 A.3d 306 (2014). In that case, the plaintiff contracted for debt adjustment services with the defendant. Within the contract was an arbitration provision that stated that any disputes would be arbitrated. But, the provision according to the New Jersey Supreme Court did not unambiguously and clearly communicate to the plaintiff that she was waiving her rights to a trial and thus, the arbitration provision was unenforceable. The New Jersey Court stated that this did not violate Concepcion because New Jersey law held that any contractual provision, not just arbitration provision, must be clear and unambiguous when a party waives a statutory or constitutional right such as the right to pursue a judicial remedy.

[68] *See* Atalese v. United States Legal Servs. Grp. L.P., 99 A.3d 306.

[69] Alltel Corp., 2014 Ark. LEXIS 492, at *16.

such, merchants who enter into such agreements with consumers in Arkansas must consider revision of their arbitration agreements to prevent litigation resulting from a lack of mutuality in those agreements. Finally, this case along with the New Jersey Supreme Court's decision in *Atalese* reflect the fact that the United States Supreme Court may eventually be forced to clarify its decision in *Concepcion* by further defining what state law contract rules can or cannot be preempted by FAA §2. Such a decision may explore whether requirements such as mutuality have a disproportionate impact upon arbitration agreements and would therefore possibly be invalid under the FAA.

V. CRITIQUE

While the Arkansas Supreme Court focuses upon Arkansas precedent regarding mutuality in arbitration agreements and Arkansas state contract law, the Court's analysis of *AT&T Mobility v. Concepcion* is curious. Throughout this decision, the Court clearly attempts to sidestep the holding of *Concepcion*, which held the FAA preempts state law that treats arbitration agreements differently from other contracts.[70] To better conceal its attempts to sidestep *Concepcion*, the Arkansas Supreme Court was careful to follow the analysis of arbitration agreements under the laws of its state that *Concepcion* did not find impermissible. The Court specifically claimed that it had not treated arbitration agreements differently from other contracts in Arkansas, but merely applied the same rules to arbitration agreements as it did to other contracts.[71] Through this statement, the Court appears to imply that the application of Arkansas law concerning mutuality does not lead to arbitration agreements being disproportionately affected.[72] By framing its analysis in this manner, the Arkansas Supreme Court's decision provides Arkansas consumers with some protection from unilateral arbitration agreements, while loosely following the letter of the law enunciated in *Concepcion*.[73]

Additionally, the Court distinguished the facts of the present case from the prior United States Supreme Court cases where it was clear that the governing analysis of the arbitration agreements or the rules regulating arbitration agreements were structured in a way that resulted in arbitration being treated differently from other contracts within the state.[74] By doing so, the Arkansas Supreme Court may have provided a way forward for limiting the holding in *Concepcion*, and reinsulate consumers from unilateral arbitration.

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[70] AT&T Mobility LLC v. Concepcion, 131 S.Ct. 1740 (2011).

[71] Alltel Corp., 2014 Ark. LEXIS 492, at *14.

[72] *See* Alltel Corp., 2014 Ark. LEXIS 492, at *15.

[73] *See* Concepcion, 131 S. Ct. 1440 at 1748..

[74] *Compare* Alltel Corp. (Mutuality is a requirement for all contracts in Arkansas, not just arbitration provisions) *with* Concepcion (Arbitration provision is unconscionable because it cannot be shown that bilateral arbitration is a substitute for class action lawsuits) *and* Casaratto (Contracts with arbitration provisions must provide such notice through the use of underlined capital letters on the first page in roder to be enforceable).

So long as state courts ensure that they, like the Arkansas Supreme Court here, merely apply state law to an arbitration provision as they would any other contract and ensure that it does not apply disproportionately to arbitration agreements, then it is entirely permissible under *Conception* to refuse to enforce an arbitration agreement that fails to follow state law.

If this was all that was required by the Supreme Court, then the decision here would be entirely commendable. But, both the parties and the Court seem to have inexplicably failed to mention or discuss the Supreme Court's decision in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.* In *Prima Paint*, the Supreme Court held courts that consider a request to stay a judicial proceeding to allow for arbitration must consider "only issues relating to the making and performance of the agreement to arbitrate."[75] The Supreme Court would, in a later case, hold *Prima Paint* to mean that "as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract."[76] Additionally, the Supreme Court has made clear that *Prima Paint* applies in state courts as well as federal courts, and that "unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance."[77]

Resultantly, an arbitration provision is severable from the rest of the contract and because *Prima Paint* explicitly applies to state courts, the Arkansas Supreme Court should have severed the arbitration provision from the rest of the contract between Alltel and its customers.[78] The provision that allegedly lacked mutuality was present in a prior (date) consumer agreement. Yet, the Arkansas Supreme Court found that the consumer agreement between Rosenow and Alltel, one made at a later date, was unenforceable because of the lack of mutuality in the prior agreement. Arguably, the old agreement should have been severed for a lack of mutuality. The new and independently written arbitration agreement should have been preserved as the agreement, by requiring both parties to arbitrate any dispute as mandated by the FAA, had mutuality.[79]

While severability is often invoked in instances where the rest of the contract is deficient and one of the parties still wishes to enforce the arbitration clause, there is no indication that this is a requirement under *Prima Paint* or its progeny even if it is generally the most likely reason for severability. Arbitration clauses can be severed so that a court can resolve challenges made specifically to arbitration clauses rather to entire contracts. In the event an arbitration clause is specifically challenged, a court may adjudicate the challenge.[80] But, if the challenge is to the contract and not specifically to

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[75] Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967).

[76] Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445 (2006).

[77] Buckeye Check Cashing, 546 U.S. 440 at 446.

[78] *See generally*, Alltel Corp., 2014 Ark. LEXIS 492 (failing to sever the arbitration provision that the court held unenforceable).

[79] Alltel Corp., 2014 Ark. LEXIS 492, at *10-11.

[80] Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 445-446 (2006).

the arbitration clause, a court must enforce arbitration and allow the arbitrator to first adjudicate the dispute.[81] In this case, Rosenow did not challenge only the arbitration clause, but also challenged the additional language from a different provision within the contract.[82] Because it was not a challenge solely to the arbitration clause, but instead was a challenge to the arbitration clause along with another provision of the contract, the Arkansas Supreme Court should have simply severed the impermissible language to preserve the arbitration clause.[83] Because the Court failed to do so, the decision in *Alltel Corp.* must be viewed as a decision that stands in direct conflict with controlling US Supreme Court precedent.

VI. CONCLUSION

The Arkansas Supreme Court's decision makes clear that state supreme courts will attempt to push back and limit the United States Supreme Court's decision in *Concepcion* in order to protect consumers and traditional state contract laws. Additionally, the Court may have provided other states with a way forward in any potential attempt to limit *Concepcion* by requiring that any arbitration provision meet mutuality requirements that are required in all state contracts in Arkansas. But, future courts should be wary to not repeat the mistake that the Arkansas Supreme Court made here by failing to consider *Prima Paint* and it's progeny of cases. It is conclusively settled that arbitration provisions are as a matter of federal law, severable from the rest of a contract. As such, any attempt to limit *Concepcion* through the requirement of mutuality or other similar means, must be done through consideration of only the arbitration provision and not the entire contract. Doing otherwise should only lead a court toward a rebuke from the United States Supreme Court for failing to follow *Prima Paint* and will not succeed in the goal of limiting *Concepcion*.

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[81] Buckeye Check Cashing, 546 U.S. 440 at 446.

[82] Alltel Corp.¸2014 Ark. LEXIS 492, at *11-12.

[83] *See* Prima Paint 388 U.S. 395; Buckeye Check Cashing 546 U.S. 440.