



January 11, 2012

SUPREME COURT HOLDS ARBITRATION AGREEMENT MUST BE ENFORCED

The United States Supreme Court recently held (only Justice Ginsburg) that an arbitration agreement in a consumer credit card agreement must be enforced according to its terms, reinforcing the Court's recent pro-arbitration decisions. *CompuCredit Corp. v. Greenwood*, 565 U.S. ___ (2012). In *CompuCredit*, consumers filed a class action against a credit card marketer and the card-issuing bank claiming violations of the federal Credit Repair Organizations Act ("CROA"). The defendants moved to compel arbitration pursuant to an arbitration agreement that provided that any claim, dispute or controversy upon election by one of the parties would be resolved by binding arbitration. The United States District Court for the Northern District of California and the Ninth Circuit Court of Appeals denied the motion to compel arbitration on the grounds that Congress intended, by referencing in a notice requirement only a right to "sue," that claims under the CROA be nonarbitrable.

The United States Supreme Court disagreed and found that the CROA did not preclude enforcement of the parties' arbitration agreement. The Court indicated that the arbitration agreement was enforceable pursuant to its terms because the Federal Arbitration Act ("FAA") establishes a liberal federal policy favoring arbitration and provides that arbitration agreements are valid, irrevocable and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract. See 9 U.S.C. § 2.

The Court was not persuaded by the consumers' argument that the FAA mandate was overridden by the CROA because the CROA (i) requires credit repair organizations to disclose a consumer's right to sue for violations of the CROA and (ii) prohibits any waiver of any right of a consumer under the CROA. According to the Court, the disclosure requirement does not provide consumers with a right to bring an action in a court of law, but merely creates the right to receive the disclosure describing the consumer protections that the CROA elsewhere provides, one of which is the right to enforce a credit repair organization's liability for failure to comply with the CROA. The Court also indicated that if Congress had intended for the CROA to prohibit arbitration agreements, Congress would have done so with clarity as it has in other contexts, rather than the "obtuse" manner suggested by the consumers.

□ *Mike Tomkies and Chuck Gall*

Darrell L. Dreher
ddreher@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Charles V. Gall
cgall@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

DREHER TOMKIES SCHEIDERER LLP

2750 Huntington Center

41 S. High Street

Columbus, Ohio 43215

Telephone: (614) 628-8000 Facsimile: (614) 628-1600

WWW.DTLAW.COM

Michael C. Tomkies
mtomkies@dtlaw.com

Margaret M. Stolar
mstolar@dtlaw.com

Robin R. De Leo
robin@dreher-la.com

Vanessa A. Nelson
vnelson@dtlaw.com

Kathleen L. Caress
kcaress@dtlaw.com

To see all previously sent ALERTS, visit our website at www.dtlaw.com
To decline future ALERTS, please contact us at ALERTS@DTLAW.COM.
This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.