

LOS ANGELES, CA

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NINTH CIRCUIT RULING SCORES HUGE VICTORY FOR CONSUMERS

LOS ANGELES – AT&T Wireless customer Kenneth Shroyer noticed that after Cingular took over AT&T, his cell phone service became worse and worse. When he called Cingular to complain, they told him he would need to enter into a new agreement with Cingular in order to get a new “chip” for his phone that would improve his wireless service.

What Cingular didn’t tell Mr. Shroyer was that by accepting the chip, he was also agreeing to a new arbitration clause forbidding him from ever participating in any class action against AT&T or Cingular. Cingular was confident that this new so-called “consumer friendly” arbitration clause would protect it from any class action with respect to its alleged scheme to force all AT&T customers to Cingular at higher rate plans and longer contracts.

On Friday, August 18, 2007, the United States Court of Appeals for the Ninth Circuit, in the landmark case of *Shroyer v. New Cingular Wireless Services, Inc.* declared Cingular’s new anti-class action arbitration clause unconscionable under the California law. The Court reversed the trial court’s dismissal of Shroyer’s class action suit against Cingular, and ruled that the suit be reinstated and proceed. “This opinion is a huge victory for consumers and strikes a blow to the ongoing attempt by big business to exterminate class actions lawsuits” said Michael L. Kelly, Shroyer’s lawyer. “This arbitration clause, and clauses exactly like it, are included in almost all consumer contracts - from igloos to iPhones.”

The *Shroyer* opinion holds that where a company with superior bargaining power, through a contract of adhesion, is alleged to have carried out a scheme to deliberately cheat large numbers of individual consumers out of small sums of money, that company cannot compel the consumer to engage in a one-on-one arbitration, and forbid them from participating in the more favorable forum of a class action.

Mr. Michael L. Kelly is a nationally recognized trial lawyer whose numerous jury verdicts have set records for not only verdict size, but have also expanded consumer protections and safeguards. He serves as a partner in Kirtland & Packard LLP, a full service law firm with offices in Los Angeles (El Segundo) and San Francisco. The firm and Mr. Kelly can be contacted through www.KirtlandPackard.com

The full opinion in *Shroyer v. New Cingular Wireless Services, Inc.* may be downloaded at www.ca9.uscourts.gov