

IN THE SUPREME COURT OF OHIO

WELLS FARGO FINANCIAL OHIO 1,
INC.,

Defendant-Appellant,

v.

LILLIE ALEXANDER,

Plaintiff-Appellee.

Case No. 08-0905

On Appeal From Cuyahoga County
Eighth District, Eighth Appellate District

Eighth District Case No. CA-07-089277

MEMORANDUM OF *AMICI CURIAE* AMERICAN FINANCIAL SERVICES
ASSOCIATION AND CONSUMER BANKERS ASSOCIATION IN SUPPORT OF
JURISDICTION OF APPELLANT,
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THIS CASE IS OF GREAT IMPORTANCE TO AMICI MEMBERS

The American Financial Services Association (“AFSA”) was organized in 1916. AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, credit card issuers, industrial banks and industry suppliers.

The Consumer Bankers Association (“CBA”) is the recognized voice on retail banking issues in the nation’s capital. Member institutions are the leaders in consumer, auto, home equity and education finance, electronic retail delivery systems, privacy, fair lending, bank sales of investment products, small business services and community development. CBA was founded in 1919 to provide a progressive voice in the retail banking industry.

AFSA and CBA (collectively “*Amici*”) frequently appear in litigation as *amici curiae* where the issues raised are of widespread importance to the nation’s business community and its customers.¹ *Amici* submit this memorandum as *amici curiae* in support of the request of Wells Fargo Financial Ohio 1, Inc. (“Wells Fargo”) to accept jurisdiction of the Eighth District’s decision in Alexander v. Wells Fargo Financial Ohio 1, Inc. (8th Dist. March 27, 2008), App. No. CA-07-089277.

This opinion raises issues of exceptional importance to *Amici* members, constituent organizations and affiliates (collectively, “*Amici* Members”), which include banks, consumer financial services companies, credit card issuers, mortgage companies and other businesses located in Ohio and throughout the nation. Most *Amici* Members include arbitration agreements

¹ See, e.g., Textron Funding Corp. v. Bessette (2001), 532 U.S. 1048; Discover Bank v. Szetela (2003), 537 U.S. 1226; Salley v. Option One Mtg. Corp. (2007), 592 Pa. 323, 925 A.2d 115.

in their business contracts because arbitration is a prompt, fair, inexpensive and effective method of resolving disputes, and it minimizes the disruption and loss of good will that often results from litigation. Based on the consistent endorsement of arbitration over the past several decades by the U.S. Supreme Court and the federal and state courts in Ohio and throughout the country, *Amici* Members have structured millions of contractual relationships around consumer arbitration agreements.

If review is not granted, the Eighth District's decision will have a serious adverse impact on the arbitration agreements used by *Amici* Members. Virtually all of those agreements employ the same "arising out of or relating to" language that is used in Wells Fargo's arbitration agreement. Indeed, that language is the same, or very similar to, the language recommended by the major national arbitration administrators for use in arbitration agreements. For example, the standard language suggested by the American Arbitration Association ("AAA"), a national organization used for decades by many *Amici* Members in Ohio and elsewhere to administer their arbitrations, includes the same "arising out of or relating to" language at issue herein:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association

American Arbitration Association, "Drafting Dispute Resolution Clauses, A Practical Guide" (hereinafter "AAA Drafting Guide"), at pp. 9-10 (Sept. 2007) (emphasis added).

Similarly, the National Arbitration Forum ("NAF"), another national arbitration administrator widely used by *Amici* Members in Ohio and throughout the nation, includes the following language in its model arbitration clause:

any claim, dispute or controversy between us or arising from or relating to this agreement or the relationships which result from this agreement ... shall be resolved by binding arbitration by the National Arbitration Forum

National Arbitration Forum, “Drafting Mediation and Arbitration Clauses, Practical Tips and Sample Language,” at p. 7 (Jan. 2005) (emphasis added). JAMS, a third national arbitration administrator often used by *Amici* Members, likewise incorporates “arising out of or relating to” language in its standard arbitration agreement. JAMS, “Guide to Dispute Resolution Clauses for Commercial Contracts” (2006).

Hundreds, if not thousands, of state and federal courts have enforced arbitration agreements containing “arising out of or relating to” language in countless factual contexts. The AAA has annotated its standard arbitration language, quoted above, with the following comment:

The preceding clause . . . , which refer[s] to the time-tested rules of the AAA, ha[s] consistently received judicial support. The standard clause is often the best to include in a contract. By invoking the AAA’s rules, such a clause . . . makes clear that all disputes are arbitrable. Thus, it minimizes dilatory court actions to avoid the arbitration process.

AAA Drafting Guide, at p. 10.

The arbitration agreements used by *Amici* Members are governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§1 et seq., which was enacted in 1925. Pursuant to Section 2 of the FAA, the statute’s core provision, “[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable . . .”² The principles of federal arbitration law embodied in the FAA are binding on state courts as well as federal courts because the FAA preempts inconsistent state law. Significantly, the FAA mandates that the language of arbitration agreements be construed broadly in favor of arbitration. This is so even

² 9 U.S.C. §2. As shown by the quotation, the FAA itself uses “arising out of” language. So does the Ohio Arbitration Act. See R.C. §2711.01 (“arises out of the contract”).

if the scope of the arbitration agreement is ambiguous or subject to doubt -- all doubts and ambiguities must be resolved in favor of arbitration.

While acknowledging that the FAA applies, the Eighth District declined to enforce Wells Fargo's broadly worded arbitration agreement. Instead, it narrowly construed the agreement's "arising out of or relating to" language and held that the borrowers' statutory claims were "not related" to the parties' contracts. It further concluded that an arbitration agreement in a loan contract is extinguished once the loan is paid, contrary to federal arbitration law.

Review by this Court is urgently needed because this case strays far from the judicial mainstream and casts a dark cloud over the millions of arbitration agreements utilized by *Amici* Members in Ohio and throughout the nation. *Amici* Members will no longer be confident that their arbitration agreements will be enforced by courts as written and interpreted pursuant to the standards mandated by federal arbitration law and decades of interpretive judicial decisions. The decision in question interjects chaos and uncertainty into arbitration issues that have long been settled. It also creates loopholes in the law of arbitration which many may try to use in an effort to avoid arbitration, hoping that companies would rather pay an inflated settlement rather than proceed through years of costly and time-consuming court litigation. Even if such efforts are not successful, substantial costs will be incurred by companies in defending against what the AAA called "dilatatory court actions to avoid the arbitration process."

Arbitration programs substantially lower litigation costs and the cost savings are passed through to consumers, in whole or in part, in the form of lower prices for goods and services. See Stephen J. Ware, Paying the Price of Process: Judicial Regulation of Consumer Arbitration Agreements, 2001 J. Disp. Resol. 89, 91-93; Richard A. Posner, *Economic Analysis of Law* 7 (6th ed. 2003). If millions of arbitration agreements are put at risk, and litigation over the

enforceability of such agreements increases, ultimately it is the consumers who will suffer the consequences through higher prices caused by these increased litigation costs.

Accordingly, *Amici* Members have a compelling interest in the issues at stake in this case and respectfully request this Court to accept jurisdiction.

STATEMENT OF THE CASE AND FACTS AND PROPOSITIONS OF LAW

Amici incorporate herein by reference Well's Fargo's Statement of the Case and Facts and Propositions of Law set forth in its memorandum of law.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: The Eighth District decision seriously undermines bedrock principles of federal arbitration law upon which *Amici* members have relied for many years in implementing consumer arbitration programs

Four fundamental principles of federal arbitration law would have compelled a different result had they been applied by the Eighth District (1) arbitration benefits consumers; (2) the scope of an arbitration agreement must be construed liberally in favor of arbitration; (3) an arbitration agreement is enforceable even if the contract in which it was contained allegedly was terminated; and (d) statutory claims are subject to arbitration.

A. Arbitration Benefits Consumers

The FAA was designed specifically “to reverse the longstanding judicial hostility to arbitration agreements that had existed at English common law and had been adopted by American courts, and to place arbitration agreements on the same footing as other contracts.” EEOC v. Waffle House, Inc. (2002), 534 U.S. 279, 288 (citation omitted). The FAA embodies a liberal federal policy favoring arbitration agreements. Howsam v. Dean Witter Reynolds, Inc. (2002), 537 U.S. 79. See also Stout v. J.D. Byrider (6th Cir. 2000), 228 F.3d 709, 714 (“[t]he FAA was designed to override judicial reluctance to enforce arbitration agreements, to relieve

court congestion, and to provide parties with a speedier and less costly alternative to litigation”),
cert. denied, (2001) 531 U.S. 1148.

Section 2 of the FAA, quoted above, creates a body of federal substantive law of
arbitrability that is binding on state courts as well as federal courts. As the U.S. Supreme Court
instructed in Buckeye Check Cashing, Inc. v. Cardegna (2006), 546 U.S. 440, 445:

[I]n Southland Corp. [v. Keating], 465 U.S. 1(1984)], we held that the FAA
“created a body of federal substantive law,” which was “applicable in state and
federal courts” We rejected the view that state law could bar enforcement of
§2, even in the context of state-law claims brought in state court.

The U.S. Supreme Court has also emphasized that arbitration benefits consumers and that
Congress intended the FAA to apply to consumer transactions:

We agree that Congress, when enacting this law [the FAA] had the needs of
consumers, as well as others, in mind. See S. Rep. No. 536, 68th Cong., 1st Sess.,
3 (1924) (the Act, by avoiding “the delay and expense of litigation,” will appeal
“to big business and little business alike ..., corporate interests [and] ...
individuals”). Indeed, arbitration’s advantages often would seem helpful to
individuals ... complaining about a product, who need a less expensive alternative
to litigation. See, e.g., H.R. Rep. No. 97-542, p. 13 (1982).

Allied-Bruce Terminix Cos. v. Dobson (1995), 513 U.S. 265, 290. Arbitration is highly favored
for its “simplicity, informality, and expedition.” Mitsubishi Motors Corp. v. Soler Chrysler-
Plymouth, Inc. (1985), 473 U.S. 614, 628.

Amici Members have relied upon these and countless other opinions which hold that the
FAA is fully applicable to consumer contracts.³ By contrast, the Eighth District’s opinion

³ See, e.g., Cardegna, supra (enforcing arbitration clause in dispute between borrower and
payday lender); Green Tree Fin. Corp.-Ala. v. Randolph (2000), 531 U.S. 79, 91-92 (enforcing
arbitration clause between consumer and subprime lender); Stout v. J.D. Byrider, supra (Sixth
Circuit enforced arbitration agreement between consumer and used car dealership); Jenkins v.
First Am. Cash Advance of Ga., Inc. (11th Cir. 2005), 400 F.3d 868, cert. denied, (2006) 126 S.
Ct. 1457 (enforcing arbitration agreement in contract between consumer and payday lender);
Harris v. Green Tree Fin. Corp. (3d Cir. 1999), 183 F.3d 173 (enforcing arbitration agreement
between borrower and subprime lender).

reflects a suspicion of consumer arbitration that is not compatible with the FAA. As the Supreme Court admonished in Gilmer v. Interstate/Johnson Lane Corp. (1991), 500 U.S. 20, 30 :

Gilmer also raises a host of challenges to the adequacy of arbitration procedures. Initially, we note that in our recent arbitration cases we have already rejected most of these arguments as insufficient to preclude arbitration Such generalized attacks on arbitration “res[t] on suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complainants,” and as such, they are “far out of step with our current strong endorsement of the federal statutes favoring this method of resolving disputes.” (Citation omitted).

Numerous empirical studies confirm that arbitration benefits consumers. To cite only a few:

- Just last month, on April 2, 2008, the U.S. Chamber of Commerce announced the results of a poll of 800 persons showing that 82% of likely voters prefer arbitration to litigation as a means to resolve a serious dispute with a company.

- A synopsis of independent studies and surveys concerning the benefits of pre-dispute consumer arbitration was published by the NAF in 2004. See “Effective and Affordable Access to Justice by Consumers -- Empirical Studies & Survey Results.” The results showed that: (a) 78% of trial attorneys find arbitration faster than lawsuits; (b) 86% of trial attorneys find arbitration costs are equal to or less expensive than lawsuits; (c) 78% of business attorneys find that arbitration provides faster recovery than lawsuits; (d) 83% of business attorneys find arbitration to be equally or more fair than lawsuits; (e) individuals prevail at least slightly more often in arbitration than through lawsuits; (f) monetary relief for individuals is slightly higher in arbitration than in lawsuits; (g) arbitration is approximately 36% faster than a lawsuit; (h) individuals receive a greater percentage of the relief they ask for in arbitration versus lawsuits; (i) 93% of consumers using arbitration find it to be fair; (j) consumers prevail 20% more often in arbitration than in court; (k) in securities actions, consumers prevail in arbitration 16% more than

they do in court; and (l) 64% of American consumers would choose arbitration over a lawsuit for monetary damages.

- In December 2004, Ernst & Young issued a study (“Outcomes of Arbitration: An Empirical Study of Consumer Lending Cases”) examining the outcomes of contractual arbitration in lending-related, consumer-initiated cases. The study, based on consumer arbitration data from January 2000 to January 2004 from the NAF, observed that: (a) consumers prevailed more often than businesses in cases that went to an arbitration hearing, with 55% of the cases that faced an arbitration decision being resolved in favor of the consumer, the exact same win-rate for consumers as exists in state court; (b) consumers obtained favorable results in 79% of the cases that were reviewed (favorable results include results from arbitration decisions, as well as settlements satisfactory to the consumer and cases that were dismissed at the claimant’s request); (c) 40% of consumers who brought claims actually got their “day in court” to tell their stories, while only 2.8% of cases in state court ever reach trial; and (d) 69% of consumers surveyed indicated that they were very satisfied with the arbitration process.

- In April 2005, Harris Interactive released the results of an extensive survey of arbitration participants sponsored by the Institute for Legal Reform at the U.S. Chamber of Commerce. The survey was conducted online among 609 adults who participated in a binding arbitration case (voluntarily, due to contract language or with strong urging by the Court, but not a court order) that reached a decision. The major findings were: (a) arbitration is widely seen as faster (74%), simpler (63%), and cheaper (51%) than going to court; (b) two-thirds (66%) of participants say they would be likely to use arbitration again with nearly half (48%) saying they are extremely likely; (c) even among those who lost, one-third say they are at least somewhat likely to use arbitration again; (d) most participants are very satisfied with the arbitrator’s

performance, the confidentiality of the process and its length; (e) predictably, winners found the process and outcome very fair and the losers found the outcome much less fair, but 40% of those who lost were moderately to highly satisfied with the fairness of the process and 21% were moderately to highly satisfied with the outcome; (f) while one in five of the participants were required by contract to go to arbitration, the remainder were voluntary – suggested by one of the parties, one of the lawyers, or the court; and (g) two-thirds of the participants were represented by lawyers.

- A 2003 Roper survey concluded that 64% of individuals would choose arbitration over court litigation, 67% believe court litigation takes too long and 32% believe court litigation costs too much.

B. The Scope of an Arbitration Agreement Must Be Construed Liberally in Favor of Arbitration

“An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” AT&T Technologies v. Communications Workers of Am. (1986), 475 U.S. 643, 650 (citation omitted). “[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” Moses H. Cone Memorial Hosp., 460 U.S. at 24-25; accord, Stout, 228 F.3d at 714-15 (Sixth Circuit held that “[c]ourts are to examine the language of the contract in light of the strong federal policy in favor of arbitration” and that “[i]t is settled authority that doubt regarding the applicability of an arbitration clause should be resolved in favor of arbitration”).

Arbitration agreements -- like Wells Fargo’s -- that cover disputes “arising out of or relating to” a particular agreement are considered “broad.” See Patnik v. Citicorp Bank Trust FSB (N.D. Ohio 2005), 412 F. Supp. 2d 753, 759 (“[a] broad arbitration clause uses language

such as ‘any dispute arising out of an agreement ...’) (citing Simon v. Pfizer Inc. (6th Cir. 2005), 398 F.3d 765, 775). “[I]n cases involving broad arbitration clauses the [U.S. Supreme] Court has found the presumption of arbitrability ‘particularly applicable,’ and only an express provision excluding a particular grievance from arbitration or ‘the most forceful evidence of a purpose to exclude the claim from arbitration’ can prevail.” Simon, 398 F.3d at 773 (citation omitted). See also Watson Wyatt & Co. v. SBC Holdings, Inc. (6th Cir. 2008), 513 F.3d 646 (“broadly written arbitration clauses must be taken at their word ...”).

Thus, under the FAA, a broad arbitration agreement must be given effect “unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” Masco Corp. v. Zurich Am. Ins. Co. (6th Cir. 2004), 382 F.3d 624 (citation and quotations omitted). The fact that a party is seeking to enforce a statutory right does not affect enforceability. See Stout, 228 F.3d at 715 (the duty of a court to enforce an arbitration clause “is not diminished when a party bound by the agreement raises claims arising from statutory rights”). Numerous other courts construing “arising out of or relating to” arbitration agreement language have likewise concluded that such language has a very broad reach.⁴

Wells Fargo’s arbitration agreements broadly apply to, inter alia, “any claim, dispute or controversy ... of any kind (whether in contract, tort or otherwise) arising out of or relating to your Loan Agreement, or any prior or future dealings between us” Such language is

⁴ See, e.g., Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d at 1114 (arbitration clause covering all controversies that may arise between signatories “broadly construed ... to apply to all disputes between signatories”); Drews Distrib., Inc. v. Silicon Gaming, Inc. (4th Cir. 2001), 245 F.3d 347, 349-50 (recognizing as “broad” an arbitration clause covering any controversy or claim related to an agreement); Kiefer Specialty Flooring, Inc. v. Tarkett, Inc. (7th Cir. 1999), 174 F.3d 907, 909 (“[s]imilar types of arbitration provisions have been characterized as extremely broad and capable of an expansive reach”).

extremely broad and naturally and easily encompasses the claims asserted here. Nevertheless, the Eighth District construed this language narrowly, reasoning that the filing of a financing statement is not an “integral part” of the lending process and, therefore, “it cannot be said that Wells Fargo’s statutory duty to timely release the mortgage lien is related to the arbitration clause set forth in the note in issue.” Alexander, ¶¶15-16. The federal law of arbitration required just the opposite construction -- a broad reading that resolved all doubts in favor of arbitration. Wells Fargo has an extremely strong argument that its statutory duty to file a termination statement is related to and arises out of the fact that a financing statement was filed in connection with plaintiffs’ loan agreements and mortgages -- indeed, without the loan contracts which contained the arbitration agreement, plaintiffs’ claims would not even exist.

At the very least, it cannot “be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” AT&T Technologies, supra. Indeed, an Ohio federal court recently concluded that the same “arising out of or related to” language used in Wells Fargo’s agreement does encompass a claim of the type asserted by the plaintiffs *sub judice*. As explained in Howard v. Wells Fargo (N.D. Ohio Sept. 21, 2007), No. 1:06CV2821, 2007 U.S. Dist. LEXIS 70099, at *8-9:

Howard also contends the recording of a mortgage satisfaction is not an integral part of the lending process, since it occurs after the debt and the extension of credit are extinguished. Wells Fargo counters, and the Court agrees, Howard’s claim does implicate the obligations of both Wells Fargo Bank and Howard under the Loan, as well as the mortgagee-mortgagor relationship between them; and the claim cannot be maintained without reference to her loan. *But for* the Loan and the mortgagor-mortgagee relationship, there would be no obligation placed on the bank to record a satisfaction upon full payment. [S]ince R.C. §5301.36 would not be implicated unless there were satisfaction of the Note obligation, this Court finds arbitration applies.

Not only is Wells Fargo’s arbitration language “susceptible” to an interpretation that would support arbitration of the plaintiffs’ claims, but a federal court has held that it does

support arbitration in an analogous factual circumstance. Moreover, Judge Stewart, in her dissenting opinion likewise found that the scope of Wells Fargo's arbitration agreement supported arbitration because "failure to file a mortgage satisfaction arises from the loan agreement and is therefore subject to the arbitration provision." (8th Dist. March 27, 2008), App. No.CA-07-089277, 2008 Ohio 1402, ¶26 (Stewart, J, dissenting).

C. An Arbitration Agreement Survives Termination of the Contract

Under the FAA, attacks on a contract as a whole, as opposed to just the arbitration clause, must be decided by the arbitrator, not a court. Buckeye Check Cashing, Inc., 546 U.S. at 445 (enforcing arbitration clause contained in payday loan agreement alleged to be void ab initio and holding that "as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract" and "this arbitration law applies in state as well as federal courts"); Prima Paint Corp. v. Flood & Conklin Mfg. Co. (1967), 388 U.S. 395 (arbitration clause was "severable" and enforceable even though the contract containing it was allegedly fraudulently induced). "[T]he basis of the underlying challenge to the contract does not alter the severability principle." Unionmutual Stock Life Ins. Co. v. Beneficial Life Ins. Co. of Am. (1st Cir. 1985), 774 F.2d 524, 529.

In particular, it is well established under both federal and Ohio law that an arbitration provision survives an allegation that the contract containing it was terminated. See, e.g., Nolde Bros., Inc. v. Local No. 358 (1977), 430 U.S. 243, 249 (a dispute, "although arising after the expiration of the collective-bargaining contract, clearly arises under that contract"); Drake Bakeries, Inc. v. Local 50 (1962), 370 U.S. 254, 262 ("[a]rbitration provisions, which themselves have not been repudiated, are meant to survive breaches of contract, in many contexts, even total breach"); Aspero v. Shearson Am. Express, Inc. (6th Cir. 1985), 768 F.2d 106 ("the duty to arbitrate does not necessarily end when the contract is terminated") (citation omitted); Cleveland

Police Patrolmen’s Assoc. v. City of Cleveland (Ohio App. 8th Dist. 1994), 643 N.E.2d 559, 564 (“the failure to expressly exclude from arbitration any contract disputes after termination gives rise to the presumption that a contended provision of an expired agreement is enforceable”) (citation and quotations omitted); Colegrove v. Handler (Ohio App. 10th Dist. 1986), 517 N.E.2d 979, 983 (“there is no reason, absent a specific contractual provision, to restrict arbitrability to disputes that arise under the contract to situations where the demand for arbitration precedes the termination of the contract”). Otherwise, parties could easily avoid arbitration by terminating a contract that requires arbitration and bringing suit in court.⁵

D. Statutory Claims Are Subject to Arbitration

Finally, it is well established that by agreeing to arbitrate, “a party does not forgo ... substantive rights” but “only submits to their resolution in an arbitral, rather than a judicial, forum.” Gilmer v. Interstate/Johnson Lane Corp. (1991), 500 U.S. 20, 26; accord, Green Tree Fin. Corp.-Ala. v. Randolph, *supra* (“even claims arising under a statute designed to further important social policies may be arbitrated because ‘so long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum,’ the statute serves its functions”). In Stout, *supra*, the Sixth Circuit held that plaintiff’s statutory claims for violations of the Truth in Lending Act (“TILA”) and the Ohio Consumer Sales Practices Act “arose under” their purchase and finance contracts with the defendants and that “neither this

⁵ Similarly, it is widely held that the alleged rescission of a contract does not impair the enforceability of an arbitration clause contained in it. See, e.g., Unionmutual Stock Life Ins. Co. v. Beneficial Life Ins. Co., 774 F.2d at 528-29 (“the arbitration clause is separable from the contract and is not rescinded by [an] attempt to rescind the entire contract”); Sweet Dreams Unlimited, Inc. v. Dial-A-Mattress Int’l, Ltd. (7th Cir. 1993), 1 F.3d 639, 641 (claims for rescission of the whole contract must be referred to arbitration under Prima Paint); Ferro Corp. v. Garrison Indus., Inc. (6th Cir. 1998), 142 F.3d 926, 938 (“[u]nder the plain language of the FAA, and the Supreme Court’s interpretation of the FAA,” a claim for rescission of an entire contract must be decided through arbitration).

Court nor the Ohio courts have the ability to mandate judicial resolution of these disputes in violation of the parties' [arbitration] agreement." 228 F.3d at 716.

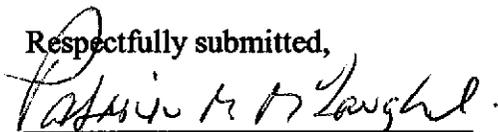
Amici Members have long relied on these and numerous other decisions which hold that statutory claims, including claims by consumers for violation of consumer protection statutes are subject to arbitration. Indeed, in our highly regulated society statutory claims are perhaps the most common type of claim asserted by consumers against businesses.⁶

CONCLUSION

The Eighth District decision contravenes four fundamental principles that lie at the core of the FAA. For that reason, it is particularly unsettling to *Amici* Members, who rely heavily on consumer arbitration programs for the economic, efficient and expeditious resolution of disputes with their customers. If review is not granted, this decision will threaten to undermine millions of arbitration agreements currently in place in Ohio and across the nation. Respect for the primacy of federal law -- the FAA -- and for the rights of consumers and businesses throughout Ohio, weighs heavily in favor of review. Therefore, *Amici* respectfully urge this Court to accept jurisdiction of the Eighth District's decision.

⁶ See, e.g., Green Tree Fin. Corp.-Ala. v. Randolph, *supra* (TILA and Equal Credit Opportunity Act); Ishmael v. Dutch Housing Inc. (Ohio App. Aug. 13, 1997), No. 96-AP-100084, 1997 Ohio App. LEXIS 3974 (Ohio Retail Installment Sales Act and Ohio Sales Practices Act); Conseco Finance Servicing Corp. v. Wilder (Ky. Ct. App. 2001), 47 S.W.3d 335 (Kentucky Consumer Protection Act).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing memorandum in support of jurisdiction was served via regular U.S. Mail on this 20th day of May, 2008 upon:

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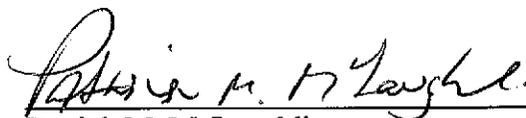
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