

Budget Cuts and the State of the San Diego Superior Court

By: Jessica A. Chasin

On September 19, 2011, ABTL presented its dinner program “The State of The Court: How State Budget Cuts Will Affect Our Superior Court.” The speakers included Presiding Judge Kevin Enright, Civil Presiding Judge Jeffrey Barton, Judge Joan Lewis, and Court Executive Officer Michael Roddy.



Jessica A. Chasin

The Budget Shortfall

Judge Enright provided a brief fiscal overview. The California Legislature cut 2011 fiscal year court funding by \$350 million. This is on top of the cuts already instituted over the past several years. More than \$300 million earmarked for court

construction was swept into the state’s general fund and is no longer available to the courts.

San Diego court’s Executive Officer, Michael Roddy, offered an overview of how San Diego is dealing with the severe budget cuts. Over the past five years, San Diego has managed to find short term solutions to immediate funding shortfalls. The courts have now used every spare dollar they were able to dig out of the couch cushions to minimize the impact of the budget crisis on court services. All of the “one-time fixes” have been exhausted, and the full impact of the budget woes are likely to hit San Diego in the next fiscal year. Throughout the evening, the panel referred to the pending impact as financial “Armageddon.”

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Brown Bag Lunch: Inside the Courtroom of Judge William S. Dato

By: Marisa Janine-Page

On September 28, 2011, Judge William S. Dato sat down with ABTL members for an informal discussion on insights into his courtroom. Judge Dato addressed his approaches to case management and law and motion.



Judge William S. Dato

Case Management

In the majority of his assigned cases, Judge Dato sets trial for 12 to 15 months from filing. In cases with minor unforeseen developments, he may entertain 18 months from filing. However, if a party wants trial set further out than 18 months, that party will be required to meet a greater burden of showing good cause. Likewise, if a trial continuance is sought, even if the parties stipulate, Judge Dato requires all the details in the supporting declaration(s). He is willing to consider such stipulations, but the

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Consumer Arbitration Agreement Found Unconscionable As Case Law Develops Post Conception

Sanchez v. Valencia Holding Company, LLC, --- Cal. Rptr. 3d ----, 2011 WL 5027488 (Cal. Ct. App. Oct. 24, 2011)

In what some will see as the latest in judicial hostility to arbitration, the California court of appeal in *Sanchez* has held that a form consumer arbitration agreement widely used by auto dealerships throughout the state is unconscionable. In so finding, the *Sanchez* court dodges the U.S. Supreme Court's recent holding in *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) that the Federal Arbitration Act (the "FAA") preempts California law limiting the terms of arbitration on state public policy grounds, including class action waivers.

Sanchez also involved an arbitration agreement containing a class action waiver. In it, a consumer filed a putative class action against an automotive dealership, alleging disclosure violations in the purchase of his vehicle. The dealership moved to compel arbitration and enforce the class action waiver. Before the Supreme Court decided *Concepcion*, the trial court denied the motion on the ground the class action waiver was unconscionable under California law. The dealership appealed, and while that appeal was pending *Concepcion* was decided.

The court of appeal in *Sanchez* did not address whether the class action waiver was unenforceable. Instead, it affirmed the denial of the motion to compel arbitration on the ground that the entire arbitration agreement was unenforceable under the unconscionability test articulated in *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000). The *Sanchez* court reasoned that even after *Concepcion*, "the doc-

trine of unconscionability is still a basis for invalidating arbitration provisions." *Sanchez*, 2011 WL 5027488 at *7. "Thus, *Concepcion* is inapplicable where, as here, we are not concerned with a class action waiver or a judicially imposed procedure that conflicts with the arbitration provision and the purposes of the [FAA]." *Id.*

The *Sanchez* court then found the arbitration agreement both procedurally and substantively unconscionable. It found procedural unconscionability because: (a) the arbitration agreement was located at the back of the two-page contract in small font and reduced line spacing; and (b) it was part of a take-it-or-leave-it contract not open to negotiation.

The court also found substantive unconscionability because of the following four terms: 1) the losing party at arbitration can appeal to a panel of three arbitrators only if the award is \$0 or exceeds \$100,000; 2) a party can appeal any award of injunctive relief; 3) an appealing party must advance the arbitration costs of appeal subject to a final determination by the arbitrator; and 4) self-help remedies, including the right to repossession, are excluded from arbitration. The *Sanchez* court concluded these provisions, though neutral on their face, are in practice one-sided in favor of the dealership.

The *Sanchez* court refused to sever the four offending terms. Instead, it concluded that the entire arbitration agreement was "permeated" with unconscionability and unenforceable.