



News

David Schultz Analyzes in ARM Compliance Digest: Appeals Court Overturns Ruling in FCRA Case Involving Arbitration Rights

July 28, 2025

In the July 21, 2025, issue of the *ARM Compliance Digest*, Hinshaw partner David Schultz wrote a column analyzing a significant U.S. Court of Appeals for the Eleventh Circuit decision that overturned a lower court's decision not to compel arbitration in a Fair Credit Reporting Act (FCRA) case.

The issue centered on the enforceability of “clickwrap” agreements—online contracts that require users to affirmatively click to accept terms and conditions. David's column explains that the court's finding that the clickwrap process used in this case was both clear and explicit helps reinforce the legal strength of such agreements in the digital age.

Additionally, he states that the decision not only supports the enforceability of clickwrap terms and clarifies that the arbitrator—not the court—decides a waiver argument due to the agreement's delegation clause.

David writes:

A powerful tool in defending class actions is the ability to compel arbitration. In internet transactions, a question often arises if the user agreed to Terms & Conditions, including arbitration rights and other relevant provisions. Some websites have a browse-wrap system, arguing the terms are accepted by using the website. Other websites require the person to click and accept the terms, i.e, clickwrap. It is easier to enforce the T&C's with a clickwrap process.

Lamonaco v Experian will be helpful for defendants. It reversed the trial court, endorsed use of clickwrap, and ruled that whether Experian waived arbitration rights via litigation is an issue for the arbitrator to decide due to the T&C's delegation clause. It thus hits on arguments plaintiffs also raise in opposing a motion to compel.

Members of the ARMs Industry often do not control what is in the T&C's or how they are implemented. However, to the extent industry members can influence creditors, this case gives guidance on some key aspects of internet arbitration rights.

Read the full July 21, 2025, edition of the *AccountsRecovery.net ARM Compliance Digest*.

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Service Areas

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- *ARM Compliance Digest:* [“Appeals Court Overturns Ruling in FCRA Case Over ‘Clickwrap’ Disclosure”](#) (July 21, 2025)