

Carter v. Countrywide Credit Industries, Inc.  
Class of employees (P) v. Employer (D)  
362 F.3d 294 (5th Cir. 2004).

**NATURE OF CASE:** Appeal of district court's grant of motion to compel arbitration.

**RULE OF LAW:** Arbitration agreements providing that Fair Labor Standards Act (FLSA) claims must be arbitrated are not per se unenforceable on the grounds that the employees' right to a judicial forum for FLSA claims cannot be waived.

**FACTS:** Countrywide Credit Industries Inc. (D) sells and services consumer mortgages. Loy Carter (P), Geoff Burkhardt (P), Heather Young (P), and Deborah Robinson (P) are current and former employees who sued under the FLSA, alleging that they were denied overtime pay. Countrywide (D) moved to compel arbitration pursuant to individual agreements signed by each employee as a condition of employment. The employees (P) argued that the arbitration agreements are unenforceable because their right to a judicial forum for FLSA claims cannot be waived and the agreements are procedurally and substantively unconscionable. They also claimed that arbitration would interfere with their substantive FLSA rights to proceed collectively, to collect attorneys' fees, to select their forum, and to engage in appropriate discovery, and that the cost-sharing provision imposes excessive costs that would prevent them from being able to arbitrate their claims. The Texas federal district court rejected most of the employees' arguments, but found that the provision in the arbitration agreements requiring the employees to pay half the arbitration costs would impose prohibitive costs. The court eliminated that provision pursuant to a severability clause, ordered Countrywide (D) to pay all the arbitration costs, and granted the motion to compel arbitration.

**ISSUE:** Are arbitration agreements providing that FLSA claims must be arbitrated per se unenforceable on the grounds that the employees' right to a judicial forum for FLSA claims cannot be waived?

**HOLDING AND DECISION:** (Jolly, J.) No. Arbitration agreements providing that FLSA claims must be arbitrated are not per se unenforceable on the grounds that the employees' right to a judicial forum for FLSA claims cannot be waived. There is a strong presumption in favor of arbitration and a party seeking to invalidate an arbitration agreement bears the burden of establishing its invalidity. Courts must enforce a party's commitment to arbitrate federal statutory claims unless the party can show that Congress intended to preclude arbitration or other nonjudicial resolution of those claims. There is nothing in the FLSA's text or legislative history indicating that it precludes arbitration. In addition, the arbitration agreements at issue in this case do not deprive the employees (P) of certain substantive rights guaranteed by the FLSA. A forum selection clause in the arbitration agreements requires that the arbitration be held in the federal judicial district in which the employee (P) was employed by Countrywide (D), and there is no evidence that this provision would prevent any of the employees (P) from vindicating their FLSA rights. The employees' (P) argument

that the cost-sharing provision made arbitration prohibitively expensive for them was moot. In October 2000, Countrywide (D) sent a memorandum to all employees stating that they would only have to pay a \$125 filing fee for arbitration and that the company (D) would pay all the other arbitration costs. The company formally acknowledged that the new policy will apply to the employees (P) in this case. Finally, the employees (P) argued that the arbitration agreements are procedurally and substantively unconscionable. Under Texas law, an arbitration agreement is not procedurally unconscionable simply because the employer was in a superior bargaining position, and in this case the agreements were not substantively unconscionable. Affirmed.

ANALYSIS: Note that the employees cited a Ninth Circuit decision involving Countrywide (D) holding that an identical arbitration agreement was unconscionable. The court distinguished that case. This case involves Texas contract law, while the Ninth Circuit case relied on California law, which differs significantly. In Texas, there is nothing per se unconscionable about arbitration agreements, while in California, a contract to arbitrate between an employer and an employee raises a rebuttable presumption of substantive unconscionability. Compare *Ferguson v. Countrywide Credit Industries, Inc.*, 298 F.3d 778 (9th Cir. 2002).