

Thomas McCarthy Discusses Supreme Court's *American Express* Ruling

Virginia Lawyers Weekly

July 8, 2013

Thomas R. McCarthy, a partner in Wiley Rein's Appellate Practice, was quoted by *Virginia Lawyers Weekly* in a June 27 article on the U.S. Supreme Court's recent ruling that individual arbitration agreements bar a group of restaurant owners from pursuing a class-action antitrust claim against American Express Co.

Ruling in favor of American Express, the Justices said in a 5-3 decision that a contractual waiver of class arbitration must be enforced, even if pursuing individual claims would cost plaintiffs more than they might recover in potential damages. On behalf of a group of law professors, Mr. McCarthy had filed an *amicus curiae* brief with the Court in support of American Express.

The Supreme Court's decision in *American Express v. Italian Colors Restaurant* is "a resounding victory for freedom of contract principles," Mr. McCarthy told *Virginia Lawyers Weekly*. "The parties are left to the bargain they agreed to."

According to the article, many companies updated their arbitration agreements to include class action waivers after the Supreme Court's 2011 ruling—in *AT&T Mobility LLC v. Concepcion*—that federal law preempts state laws that prohibit such waivers.

"If they haven't done it already, I certainly expect they would after *American Express*," Mr. McCarthy said.

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