

NJ Supreme Court's Oral Argument of Consumer Class Action Case

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09.12.2018

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Edward J. Fanning, Jr.

Law360 notes David Kott's representation of amici New Jersey Business and Industry Association, New Jersey Chamber of Commerce and the Commerce and Industry Association of New Jersey in its coverage of *Kernahan v. Home Warranty Administrator of Florida, Inc.*

In June 2017, the Appellate Division upheld a trial court ruling that the arbitration clause in Ms. Kernahan's agreement was unenforceable under the conditions of the New Jersey Supreme Court's 2014 decision in *Atalese v. U.S. Legal Services Group LP*. On Wednesday, the two warranty companies sought to overturn the Appellate Division's decision, asserting that they misapplied the *Atalese* decision and disregarded the United States Supreme Court's decision in *Kindred Nursing Centers v. Clark*, in which a Kentucky Supreme Court's "clear statement rule" requiring express waiver language was overturned.

During oral arguments, Mr. Kott reiterated the *Kindred* decision's finding, arguing that a clear statement on waiving the right to sue disfavors arbitration because a "primary characteristic of arbitration is the inability to go to court." McCarter's brief was authored by Mr. Kott and Edward J. Fanning, Jr., and Steven Del Mauro.