

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08-3837

FRANCIS J. PULEO; TRISH C. PULEO,  
ON BEHALF OF THEMSELVES AND ALL OTHER  
PENNSYLVANIA RESIDENTS SIMILARLY SITUATED

v.

CHASE BANK USA, N.A.

Francis J. Puleo; Trish C. Puleo, Appellants

(U.S. District Court for the Eastern District of Pennsylvania No. 07-cv-04800)

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, AMBRO,  
FUENTES, SMITH, FISHER, CHAGARES, JORDAN and ROTH,  
Circuit Judges

**ORDER**

The Court, *sua sponte*, orders rehearing en banc in the above captioned appeal.

The matter will be argued before the en banc court on Wednesday, February 17, 2010, at  
10:00 a.m.

Counsel are directed to file supplemental briefs and shall be prepared to address  
the following issues at argument:

1. Is an unconscionability challenge to an arbitration agreement's class action waiver provision to be decided by the court or the arbitrator?
2. Does the answer to Question 1 turn on whether the waiver provision, if invalid, would render the arbitration clause as a whole unenforceable?
3. In deciding whether the validity of the waiver provision is a question for the arbitrator or the court, is it relevant whether:
  - a. all parties agree that the case is arbitrable?

- b. the contract contains a severability clause that would leave the remainder of the arbitration clause enforceable if the waiver provision is held invalid?

The supplemental briefs shall be filed within 14 days from the date of this order. The inclusion of a jurisdictional statement, statement of the issues, statement of the case, and statement of the facts in the supplemental briefs is not required. The briefs shall not exceed 15 pages or 7,500 words.

By the Court,

/s/ Anthony J. Scirica  
Chief Judge

Dated: 3 December 2009