



APRIL 26, 2019

U.S. Supreme Court Rules Class Arbitration Must Be Explicitly Authorized

On April 24, 2019, the United States Supreme Court held that under the Federal Arbitration Act (“FAA”), an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration. The Supreme Court considered whether the FAA bars an order requiring class arbitration when an agreement is not silent, but rather ambiguous about the availability of such arbitration. In a 5-4 decision, the Court overturned the Ninth Circuit’s ruling that allowed a worker’s data breach class arbitration to move forward.

Background

In 2016, Frank Varela (“Varela”) filed a putative class action against his employer, Lamps Plus, Inc. (“Lamps Plus”), in federal district court on behalf of about 1,300 employees whose tax information had been compromised by a hacker. Relying on the arbitration agreement in Varela’s employment contract, Lamps Plus sought to compel arbitration—on an individual rather than a classwide basis—and to dismiss the suit. The district court rejected the individual arbitration request, but authorized class arbitration and dismissed Varela’s claims. Lamps Plus appealed, arguing that the district court erred by compelling class arbitration, but the Ninth Circuit affirmed. Even though the Supreme Court ruled in *Stolt-Nielson S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662 (2010) (“*Stolt-Nielson*”), that a court may not compel arbitration on a classwide basis when an agreement is silent on the availability of such arbitration, the Ninth Circuit ruled that *Stolt-Nielson* was not controlling because the agreement in the case was ambiguous rather than silent on the issue of class arbitration. The Ninth Circuit’s contrary conclusion was based on the state law *contra proferentem* doctrine, which requires contractual ambiguities to be construed against the drafter. The Supreme Court disagreed.

Supreme Court Decision

The Supreme Court reasoned that the Ninth Circuit's contrary conclusion based on the state law *contra proferentem* doctrine, is based on public policy considerations rather than on the intent of the parties. The Supreme Court found that such an approach is flatly inconsistent with the foundational FAA principle that arbitration is a matter of consent and that the task of the courts and arbitrators is to give effect to the intent of the parties.

The Supreme Court also highlighted the importance of recognizing the fundamental difference between class arbitration and the individualized form of arbitration envisioned by the FAA. Individual arbitration is, the Court noted, cheaper and quicker, while class arbitration takes longer, costs more, and is procedurally more complex. Similar to its reasoning in *Stolt-Nielson*, the Supreme Court reasoned that, like silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to sacrifice the principal advantage of arbitration.

Takeaway for Employers

Employers should keep in mind that if they intend to permit class arbitration, it must be explicitly authorized in arbitration agreements. Employers are cautioned however that in incorporating by reference the rules of various arbitration forums, which permit class-wide arbitration, they may unwittingly be consenting to class-wide arbitration. Employers are encouraged therefore to make explicit that they are agreeing only to individual, rather than class-wide arbitration.

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If you have any questions regarding the Supreme Court's ruling in *Lamps Plus, Inc., et al., v. Varela*, Case No. 27-988, please do not hesitate to contact us.

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