

THE
NATIONAL LAW REVIEW

U.S. Supreme Court Illuminates Class Arbitration and FAA Appeal Issues

Wednesday, April 24, 2019

In an important ruling that further narrows the circumstances in which class arbitration will be permitted, the Supreme Court today held that under the Federal Arbitration Act (FAA), the fact that a contract is ambiguous on the issue of class arbitration is not a legally sufficient ground for requiring classwide arbitration. The Court also clarified that a court order compelling class arbitration is immediately appealable under the FAA if the moving party sought to compel only individual arbitration.

The decision in [Lamps Plus, Inc. v. Varela](#) underscores the necessity of ensuring that arbitration agreements in employee and consumer contracts are properly drafted and contain express class action waivers. Previously, in its landmark 2010 decision, [Stolt-Nielsen, S.A. v. AnimalFeeds International Corp.](#), the Court held that, in light of the fundamental differences between class and individual arbitration, class arbitration cannot be required under the FAA unless there is a contractual basis for concluding that the parties “agreed” to arbitrate on a class basis. Courts cannot infer such an agreement from the fact that the arbitration agreement is silent on the issue of class arbitration or from the mere fact that the parties agreed to arbitrate at all.

As we reported previously, [Lamps Plus](#) presented the question of whether the FAA similarly prohibits class arbitration when the agreement is not silent, but rather ambiguous about the availability of such arbitration. The case arose when a Lamps Plus employee brought a class action against the company in a California federal district court alleging that employees’ personal information had been compromised. The company moved to compel individual arbitration based on an arbitration clause in the employment agreement that did not contain an express class action waiver. The district court granted the motion but compelled classwide, not individual, arbitration.

A divided Ninth Circuit panel affirmed on the ground that the agreement was ambiguous, but not silent, on the issue of class arbitration, and, under California contract law, ambiguous contracts should be construed against the drafter. The Ninth Circuit majority inferred that the parties assented to class arbitration based on the standard language in their agreement that “arbitration shall be in lieu of any and all lawsuits or other civil proceedings” and a description of the substantive claims subject to arbitration. The dissenting judge concluded this was a “palpable evasion of *Stolt-Nielsen*.” The Third, Fifth, Sixth, Seventh and Eighth Circuits have likewise concluded that the FAA preempts state contract law on this issue because the FAA requires affirmative evidence of consent as matter of federal law.

In a 5-4 opinion authored by Chief Justice Roberts, the Supreme Court reversed the Ninth Circuit. The Court concluded that given the material differences between class arbitration and individual arbitration, “[l]ike silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to sacrifice the principal advantages of arbitration.” The advantages of individual arbitration, the Court emphasized, include “lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.” The Court also held that the Ninth Circuit erred in applying California’s *contra proferentem* contract construction principle, since “the FAA provides the default rule for resolving ambiguity here.”

The appeal issue in *Lamps Plus* is one that many practitioners have confronted. Section 16 of the FAA permits an

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immediate appeal from a court order denying a motion to compel arbitration, but not an order granting such a motion. On occasion, a court will grant a motion to compel arbitration, but on terms different from those requested by the moving party. The Court held that Lamps Plus had standing to appeal the district court's order compelling arbitration because it had sought individual arbitration but was ordered to arbitrate on a classwide basis, which was a "fundamental change."

Lamps Plus demonstrates that the Court continues to champion the benefits of individual private arbitration to employees and consumers. Last term, in [*Epic Systems Corp. v. Lewis*](#), it upheld the use of express class action waivers in employment agreements, rejecting the contention that the use of such waivers violated federal labor statutes. Earlier, in [*AT&T Mobility, LLC v. Concepcion*](#), it validated the use of such waivers in consumer arbitration agreements, holding that the FAA preempted contrary California state law.

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