

SCOTUS Reverses Ninth Circuit, Finds Class Arbitration Must be Explicitly Authorized in Agreements

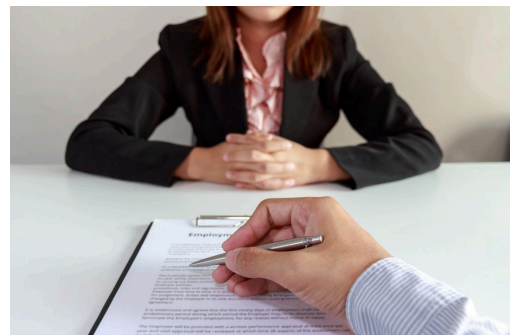
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Last year, the U.S. Supreme Court (SCOTUS) handed employers a major win in [Epic Systems v. Lewis](#), when it ruled that employees must submit claims to arbitration on an individualized basis when their employment agreements require it, even when those claims could be brought as class or collective action under federal legislation. More recently, in *Lamps Plus Inc. et al. v. Frank Varela*, SCOTUS addressed the issue of whether a worker can pursue class arbitration when an arbitration agreement does not explicitly address class arbitration. By a 5-4 vote, the court said class arbitration is also barred in such circumstances, holding that “[u]nder the Federal Arbitration Act, an ambiguous agreement cannot provide the necessary contractual basis for concluding that the parties agreed to submit to class arbitration[.]”

The decision reversed the prior holding of the U.S. Court of Appeals for the Ninth Circuit. At issue in the case was the hacking of tax information of approximately 1,300 employees by a cybercriminal. After a fraudulent federal income tax return was filed in the name of one of the affected employees, he filed a putative class action against the employer. The employer sought to compel arbitration based on an arbitration provision in the employee’s employment agreement. The District Court rejected the individual arbitration request, but compelled class arbitration because the arbitration provision was ambiguous and the U.S. Court of Appeals for the Ninth Circuit affirmed the District Court’s ruling.

SCOTUS found that the Federal Arbitration Act requires courts to “enforce arbitration agreements according to their terms” and arbitration is strictly a matter of consent. The Court relied on its prior holding in *AT&T Mobility LLC v. Concepcion* that class arbitration “sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment.” The Court also relied on its previous holding in *Stolt-Nelson S.A. v. AnimalFeeds Int’l Corp.* which found that because of the “crucial differences” between individual and class



arbitration, courts cannot infer consent to participate in class arbitration absent an affirmative “contractual basis for concluding that the party *agreed* to do so.” Mere silence is not enough.

In *Lamps Plus*, the Court expanded on the *Stolt-Nelson* holding by finding that ambiguity, just like silence, is not enough to allow a court to compel class arbitration. The Ninth Circuit had found that the agreement at issue was ambiguous regarding consent to class arbitration and relied on the rule of contract interpretation that ambiguities are construed against the drafter to support its holding that class arbitration could be compelled. The Court rejected that rationale and held instead that an ambiguous agreement cannot provide the necessary “contractual basis” for compelling class arbitration. Accordingly, the Court held that a court cannot compel class arbitration without an explicit agreement by the parties.

This is another major win for employers who wish to avoid class arbitration. We encourage employers to consult with their legal counsel to make sure the drafting of their arbitration agreements properly reflect the outcomes they intend.

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