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ARBITRATION

Expert Analysis

# High Court to Decide When a Contract Is Ambiguous on Question of Arbitration

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On May 21, the Supreme Court handed down its highly anticipated decision in *Epic Systems v. Lewis*, 584 U.S. ___ (2018). The court, in a 5-4 decision, upheld arbitration agreements that waive employees' rights to bring class arbitration against their employers. On April 30, the Supreme Court granted certiorari in *Lamps Plus v. Varela*, taking up for review the question of "whether the Federal Arbitration Act forecloses a state-law interpretation of an arbitration agreement that would authorize class arbitration based solely on general language commonly used in arbitration agreements."

After his employer, Lamps Plus, Inc. (Lamps Plus) disclosed his personal information in a data breach, Frank Varela filed a class action lawsuit against it alleging negligence, breach of contract, invasion of privacy and other claims. Lamps Plus moved to compel arbitration because Varela had signed an arbitration agreement which was required as a condition of employment. In that agreement, Varela agreed that "all claims or controversies ('claims'), past, present or future that I may have against the company or against its offers, directors, employees or agents or that the company may have against me" would be resolved by arbitration. The district court ordered that the case be arbitrated, but that it be arbitrated on a classwide basis. The district court reasoned that the agreement was an adhesion contract, was ambiguous on the question of class arbitration, and that the ambiguity would be construed against the drafter, Lamps Plus.

### 'Stolt-Nielsen v. AnimalFeeds International'

On appeal, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court order compelling arbitration on a classwide basis. The panel acknowledged that a party cannot be compelled to submit to class arbitration under the Federal Arbitration Act "unless there is a

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contractual basis for concluding that the party agreed to do so," as in *Stolt-Nielsen v. AnimalFeeds International*, 559 U.S. 662, 684 (2010) (emphasis in original). In the majority's view, although the agreement did not expressly authorize class arbitration, "reasonable—and perhaps the most reasonable interpretation of the expansive language" requiring Varela's assent to waiver of "any right I may have to file a lawsuit or other civil action," his additional waiver of "any right I may have to resolve employment disputes through trial by judge or jury," and his agreeing that "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to my employment majority" is that "it authorizes class arbitration. It requires no action of interpretive acrobatics to include class proceedings as part of a 'lawsuit or other civil proceeding." Secondarily, since the agreement was capable of two reasonable constructions—one permitting class arbitration, one excluding it, the district court properly relied on the state-law doctrine holding that contractual ambiguities should be construed against the drafter. The dissent stated that the agreement was not ambiguous and that "we should not allow Varela to enlist us in this palpable evasion of *Stolt-Nielsen*."

## 'Envisioned by the FAA'

In its petition for certiorari, Lamps Plus argued that the Ninth Circuit's decision is in violation of the Supreme Court's ruling in *Stolt-Nielsen*, which holds that the FAA prohibits inferring "an implicit agreement to authorize class-action arbitration from the fact of the parties' agreement to arbitrate." Lamps Plus also relied on *AT&T Mobility v. Concepcion*, 563 U.S. 333, 348 (2011), for the proposition that bilateral arbitration is the form of arbitration "envisioned by the FAA." The company cited both cases for the proposition that the policy advantages of bilateral arbitration are its reduced procedural rigor and resultant lower costs, greater efficiency and speed. Thus, class arbitration is "not arbitration as envisioned by the FAA" because it undercuts these advantages.

Lamps Plus also argued that while the parties had agreed to arbitration "in lieu of any and all lawsuits or other civil proceedings," they did not agree that arbitration would duplicate all procedures available in court, specifically, class actions.

Varela argued that the Ninth Circuit had merely applied existing state and federal law to ambiguous contractual language, following an established procedure. It first "applied the FAA principle that class arbitration is permissible only if there is a contractual basis for it, and then it turned to generally applicable state contract law to ascertain whether such a contractual basis existed."

In the wake of *Epic Systems, Lamps Plus* is likely to bring clarity as to precisely under which circumstances class arbitration will remain an option for claimants in an agreement ostensibly silent on the question of class arbitration.

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