

US Supreme Court Clarifies Language Triggering Class-wide Arbitration

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A majority of the U.S. Supreme Court held that the Federal Arbitration Act ("FAA") bars class arbitration actions when the agreement is ambiguous about the availability of such arbitration. The opinion strengthens protections for employers and serves as a reminder that employers should review and update their arbitration agreements.

In the opinion, released on April 24, 2019, the Supreme Court extended its previous holding in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010), which prohibits class arbitration where the arbitration agreement is silent on whether the parties agreed to arbitrate on a class-wide basis.

In *Lamps Plus, Inc., et al. v. Varela*, No. 17-988, ___ U.S. ___ (2019), an employee whose information was stolen and used in a fraudulent income tax return filed a lawsuit on behalf of a putative class of employees whose tax information had been compromised by the employer. Lamps Plus, Inc. filed a motion to compel arbitration on an individual basis, rather than class-wide, claiming that the arbitration agreement, which was silent on the availability of class-wide arbitration, therefore did not permit it. Both the trial court and the Ninth Circuit Court of Appeals disagreed. Viewing the arbitration agreement to be ambiguous about class-wide arbitration, the lower courts found that class arbitration was permitted.

Writing for the majority of the Supreme Court, Chief Justice John Roberts held that *Stolt-Nielsen* controls and bars class arbitration in this case. Applying the principle that "arbitration is strictly a matter of consent," and recognizing the fundamental differences between class and individual arbitrations, the Supreme Court found that consent to arbitrate class-wide may not be inferred "absent an affirmative contractual basis for concluding that the party agreed to do so."

The *Lamps Plus* majority also rejected the Ninth Circuit Court's reliance on state contract principles to "reshape traditional individualized arbitration" by compelling class arbitration without the parties' consent.

What does this mean for employers? *Lamps Plus, Inc.* provides enhanced protection for employers who have live arbitration agreements that are either silent or ambiguous about the availability of class arbitration. The decision acknowledges that absent explicit agreement between the parties to arbitrate class-wide, class arbitration is not available. The decision also provides a reminder that, because court rulings can change in the future, it might serve an employer well to draft future arbitration agreements with specific language prohibiting arbitration on a class-wide basis.

As always, please feel free to contact authors or your Miller Canfield attorneys if you have any questions.