

# Employment Practices Liability

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## U.S. Supreme Court Holds Class-Wide Arbitration Not Permitted Where Arbitration Agreement Language is Ambiguous With Respect to Class Claims

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On April 24, 2019, the U.S. Supreme Court held in *Lamps Plus, Inc. v. Varela*, a 5-4 decision, that because arbitration is a matter of consent, where an arbitration agreement's provisions regarding class claims were ambiguous and not express, the arbitration agreement did not allow for class proceedings.

**Factual Background:** In 2016, a hacker obtained personal tax information for 1,300 employees of Lamps Plus, a company that sold light fixtures and similar products. One of these employees was Frank Varela, who was the victim of a fraudulent income tax return resulting from the disclosure of Lamps Plus's employees' personal information. Mr. Varela filed a lawsuit against Lamps Plus on behalf of a class of employees whose tax information had been compromised. However, Mr. Varela signed an arbitration agreement upon commencement of his employment, which included the following relevant terms:

- Waiver of "any right I may have to file a lawsuit or other civil action or proceeding relating to my employment with the Company."
- "The Company and I mutually consent to the resolution by arbitration of all claims... that I may have against the Company."
- "Specifically, the Company and I mutually consent to the resolution by arbitration of all claims that may hereafter arise in connection with my employment."

The arbitration agreement did not expressly refer to class-wide claims, but, as the Court found, this language was ambiguous as to the ability to pursue class claims at arbitration.

In response to Mr. Varela's lawsuit, Lamps Plus moved to compel arbitration on an individual basis and sought dismissal of the lawsuit. The District Court granted Lamps Plus's motion to compel, but ordered that arbitration proceed on a class-wide basis. The District Court dismissed the lawsuit. Lamps Plus appealed the District Court's order regarding class-wide arbitration to the Ninth Circuit, which affirmed the District Court's decision. Lamps Plus then petitioned the U.S. Supreme Court for a writ of certiorari, which the U.S. Supreme Court granted.

**Issue:** The U.S. Supreme Court answered the following question: Whether the Federal Arbitration Act (FAA) bars an order requiring class arbitration when an arbitration agreement is not silent, but rather ambiguous about the availability of such arbitration.

**Court's Analysis:** In *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010), the U.S. Supreme Court addressed an arbitration agreement that was silent regarding class claims, and the Court held "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so." Relying on this precedent, the Court's majority opinion answered the issue currently presented in the affirmative. The Court found that the

FAA "requires courts to enforce covered arbitration agreements according to their terms," and here, the arbitration agreement contained no express terms regarding class-wide claims.

The Court's majority opinion rejected the Ninth Circuit's application of California contract law, particularly the doctrine of interpretation which requires ambiguous language to be construed against the drafter of the agreement, which in this case, would support a finding in favor of arbitration on a class-wide basis.

The Court held that arbitration is strictly a matter of consent because arbitrators act only under the authority provided by the arbitration agreement. Accordingly, courts must give effect to the intent of the parties. Application of California's contract law did not achieve such result because the state rule construing a contract against the drafter is used to resolve a dispute only after a court determines it cannot identify the intent of the parties. In other words, the rule does not help the court derive the meaning of the parties' agreed upon terms; rather, it is simply a means to resolve a dispute without regard to the parties' intent. The Court found that application of the state rule did not establish that the parties consented to class-wide arbitration.

The Court's majority conclusion is consistent with the benefits of individualized arbitration, namely lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes. The Court found that permitting class-wide arbitration in the absence of express language memorializing the intent of the parties to proceed on a class-wide basis would make arbitration more costly and thwart the informal nature of arbitration by slowing down the process with procedural issues.

Finding *Stolt-Nielsen* controlling, the U.S. Supreme Court held that "like silence, ambiguity does not provide sufficient basis to conclude that parties to an arbitration agreement agreed to sacrifice the principal advantage of arbitration." Rather, affirmative express language is required to find that parties to an arbitration agreement agreed to class-wide arbitration.

Chief Justice Roberts issued the Court's opinion, in which Justices Thomas, Alito, Gorsuch and Kavanaugh joined. Justice Thomas issued a concurring opinion. Justice Ginsburg issued a dissenting opinion, in which Justices Breyer and Sotomayor joined. Justice Kagan also issued a dissenting opinion in which Justices Ginsberg and Breyer joined, and Justice Sotomayor joined in part. Finally, Justices Breyer and Sotomayor also issued dissenting opinions.

**Conclusion:** Some employers may find it useful to utilize arbitration agreements with their employees in order to resolve claims in a less formal and less expensive setting, in lieu of proceeding in federal court on a class or collective basis. However, when drafting an arbitration agreement, employers should consult with their labor and employment attorneys to

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review the express language of the agreement in an effort to avoid disputes over interpretation, particularly with respect to waivers of class claims and proceedings.

Cindy Cieslak is a partner at Rose Kallor, LLP. Rose Kallor, LLP regularly represents and advises private and public sector employers on matters pertaining to the employer-employee relationship, including discrimination, harassment, and wage and hour issues. If you have questions about this legal update, please contact Rose Kallor, LLP at 860-361-7999. If you wish to receive future updates on labor and employment related topics, please contact Jacqueline Smith, CIRMA Communications Associate at [jsmith@ccm-ct.org](mailto:jsmith@ccm-ct.org).

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