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Insights on the Latest Developments in Labor and Employment Law

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Ambiguous language in an arbitration agreement is not a sufficient basis for concluding a party has agreed to class arbitration, the U.S. Supreme Court ruled last week. In *Lamps Plus, Inc. v. Verela*, the Court held that, under the Federal Arbitration Act (FAA), courts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide, rather than individual, basis. Instead, class arbitration must be expressly authorized in the contract.

By way of background, after a data breach resulted in the disclosure of more than 1,000 Lamps Plus employees' tax information, an employee brought a putative class action against the company. Because the employee had signed an arbitration agreement upon being hired to work for Lamps Plus, the company moved to compel individual arbitration. The employee's arbitration agreement with Lamps Plus provided for arbitration of "all claims that may . . . arise in connection with [employee's] employment," and further provided that "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings relating to [employee's] employment." The arbitration agreement said nothing explicit about class arbitration. The district court agreed that the case should be arbitrated, but held that the arbitration should be conducted on a classwide, rather than individual, basis. The U.S.

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Court of Appeals for the Ninth Circuit affirmed that ruling, relying on the state law principle of contract interpretation that ambiguities in a contract must be construed against the drafter (Lamps Plus). The appellate court concluded that the contract was ambiguous, and therefore the parties agreed to class arbitration.

Reversing the Ninth Circuit, Chief Justice John G. Roberts, writing for the 5-4 majority, explained: “[c]ourts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis.” With this pronouncement, the Court rejected the Ninth Circuit’s reasoning based on state law contract principles, and created a new rule based on the FAA, holding that ambiguous agreements do not authorize class arbitration. The majority squared its conclusion with its previous decision in *Stolt-Nielsen v. Animal Feeds Int’l Corp.*, in which the Court held that a court cannot compel class arbitration when the arbitration agreement in question is “silent” on the availability of class arbitration.

Reiterating the principle previously illuminated in the Court’s *Epic Systems Corp. v. Lewis* decision (which we wrote about here), the majority explained that allowing a party to assert class claims in arbitration under an agreement that is silent or ambiguous on class arbitration is at odds with the goals of individual arbitration, which includes “lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.”

The Lamps Plus decision is a win for employers as it clarifies that an agreement that is ambiguous as to whether class arbitration is available cannot provide the necessary contractual basis for concluding that the parties agreed to class arbitration. However, to avoid a fight over contractual ambiguities, employers who want to avoid class arbitration are best served by explicitly, and specifically, including a class and/or collective action waiver in arbitration

agreements. For assistance with drafting employee arbitration agreements to include class/collective action waivers, contact your Akerman employment lawyer.

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