

# Class-Wide Arbitration May Not Be Compelled in the Face of an “Ambiguous” Arbitration Agreement

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In a case with important implications for employers, *Lamps Plus, Inc. v. Varela*, the United States Supreme Court held that class-wide arbitration may not be compelled pursuant to an arbitration agreement that is ambiguous as to whether it permits arbitration on a class-wide, rather than individual, basis. Because the agreement at issue was ambiguous on the issue of class-wide arbitration, the plaintiff was required to arbitrate his claims on an individual basis.

## Factual Background and Lower Courts’ Opinions

The case arose from a data breach that led to a fraudulent income tax return being filed on behalf of the named plaintiff, Frank Varela. Varela filed a putative class action in federal district court in California and Lamps Plus moved to compel arbitration on an individual basis pursuant to an arbitration agreement that did not explicitly prohibit, but also did not explicitly permit, class-wide arbitration. The district court granted the motion to compel arbitration, but did so on a class-wide basis. Lamps Plus appealed and the Ninth Circuit affirmed.

The Ninth Circuit held that the arbitration agreement was ambiguous with respect to whether it permitted class arbitration because some phrases could be interpreted to allow such a procedure (e.g., “arbitration shall be conducted in lieu of any and all lawsuits or other civil legal proceedings relating to my employment.”). Because the court viewed the agreement as ambiguous, it applied a California state law contractual doctrine to construe the ambiguity against the drafter, Lamps Plus. Accordingly, the court affirmed the order compelling arbitration on a class-wide basis.

## Supreme Court’s Holding

The Supreme Court reversed, holding that arbitration cannot be compelled on a class-wide basis where the agreement is ambiguous as to whether it permits class arbitration.

The court began with the long-standing principle that “arbitration is strictly a matter of consent.” The court’s role, therefore, is to give effect to that intent because arbitrators’ powers come from the parties’ agreement. The court also recognized the “crucial differences” between class and individual arbitration, including lower costs and greater efficiency in individual arbitration.

In addition, the Court relied on its prior decision in *Stolt-Nielsen v. AnimalFeeds Int’l Corp.*, in which the Supreme Court held that class-wide arbitration may not be compelled pursuant to an arbitration agreement which is “silent” on the issue of class-wide arbitration. The Court analogized that “[l]ike silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to sacrifice the principal advantage of arbitration.”

The Court also rejected the Ninth Circuit’s reliance on the state law contract doctrine that construed the ambiguous agreement against Lamps Plus. The Court noted that the doctrine only applies “as a last resort” and resolves ambiguity “based on public policy factors.” Thus, the doctrine does not help interpret the agreement to discern the intent of the parties, but instead applies when a court cannot discern that intent. Accordingly, the Court held that the state law doctrine cannot provide the requisite “consent” needed for class-wide arbitration.

Thus, the Court held that class-wide arbitration could not be compelled.

## Implications for Employers

Employers can take solace in the Supreme Court's recent arbitration jurisprudence. Last term, in *Epic Systems Corp. v. Lewis*, the Supreme Court held that class action waivers are permissible.

In light of *Lamps Plus*, however, employers have a strong argument under *Stolt-Nielsen* that even an arbitration agreement without an explicit class action waiver does not permit class arbitration if the arbitration agreement is "ambiguous" or "silent" as to the issue.

While the Supreme Court gave deference to the Ninth Circuit's finding that the Lamps Plus arbitration agreement was "ambiguous," litigation will likely focus on what constitutes an ambiguity with respect to class-wide arbitration.

Employers should revisit their arbitration agreements in light of these recent cases to determine whether revisions are necessary, and employers who do not have an arbitration agreement in place should determine whether to implement one.

If you have any questions regarding the topics discussed in this article, please contact **Heather M. Sager** at +1 (415) 749 9510, **Lowell B. Ritter** at +1 (415) 749 9506 or any Vedder Price attorney with whom you have worked.