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Epic Systems May Point To Fate Of 'Lamps Plus' At High Court

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Within a few weeks, the U.S. Supreme Court decided one blockbuster arbitration case and agreed to tackle another.

Two weeks ago, in *Epic Systems Inc. v. Lewis*, the U.S. Supreme Court paved the way for employers to utilize class and collective action waivers in arbitration agreements when it held that such waivers do not violate the National Labor Relations Act.[1] The 5-4 opinion was penned by Justice Neil Gorsuch shortly after his one-year anniversary on the court.

Only weeks earlier, the court granted certiorari in another arbitration case, *Lamps Plus Inc. v. Varela*.[2] With the NLRA issue resolved, the court will now decide whether a party can be compelled to class arbitration when the underlying arbitration agreement is silent on the issue.

Lamps Plus has broad implications for employers. If the Ninth Circuit's decision is affirmed, plaintiffs subject to arbitration agreements that are silent on class issues could find a "back door" into class arbitration — even though the parties never expressly agreed to arbitrate class claims.

This begs the question — does the recent Epic Systems decision hint as to how the court may decide Lamps Plus? I believe it does and that the Ninth Circuit's unpublished panel decision is highly susceptible to reversal.

Background of Lamps Plus

Frank Varela, an employee of Lamps Plus, filed a putative class action in California federal court following a data breach that resulted in release of employee information.[3] Upon hiring, Valera signed an arbitration agreement in which he consented to arbitration of "all claims that may hereafter arise in connection with my employment or any of the parties' rights and obligations arising under this agreement."[4] The agreement was silent on class proceedings. It otherwise stated, in part:

> I understand that by entering into this Agreement, I am waiving any right I may have to file a lawsuit or other civil action or proceeding relating to my employment with the Company and am waiving any right I may have to resolve employment disputes through trial by judge or jury. I agree that arbitration shall be in lieu of all lawsuits or other civil legal proceedings relating to my employment.[5]

Lamps Plus moved to compel arbitration on an individual basis. The district court granted the motion; however, it ordered class — rather than individual — arbitration.[6] The district court interpreted the arbitration agreement to be "broad enough to encompass class claims as well as individual claims or is at least ambiguous and should be construed against the drafter."[7]

A divided Ninth Circuit panel affirmed on appeal. In an unpublished opinion, the court held that "[a] reasonable — and perhaps the most reasonable — interpretation of [the agreement's] expansive language is that it authorizes class arbitration. It requires no act of interpretive acrobatics to include class proceedings as part of a 'lawsuit or other civil legal proceeding[].'"[8] The court was also persuaded by the fact that the agreement including not only lawsuits and civil actions but also other "proceedings." It also found material that the agreement allows for the arbitrator to award "any remedy allowed by applicable law," which includes class relief.[9]

The Ninth Circuit panel held that the district court "correctly found ambiguity," which, according to state law contractual principles, must be construed against the agreement's drafter, Lamps Plus.[10]

On April 30, 2018, the U.S. Supreme Court granted certiorari to answer the following question: "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."[11]

What Does Epic Systems Mean for Lamps Plus?

Epic Systems' teachings are simple: Congress instructed the courts to enforce arbitration agreements as written and there is no evidence that the NLRA was intended to displace the Federal Arbitration Act. The decision represents yet another example of the Supreme Court's reflecting a "liberal federal policy favoring arbitration" and rejecting "efforts to conjure conflicts" between the FAA and other statutes.

The key question in Lamps Plus, on the other hand, is whether state law contractual principles can force a party into class arbitration when the agreement is silent on class treatment.

Three quotes from Epic Systems provide clues as to the newly constituted court's leaning on this topic:

- "Not only did Congress require courts to respect and enforce agreements to arbitrate; it also specifically directed them to respect and enforce the parties' *chosen* arbitration procedures."[12]

- "Concepcion's essential insight remains: courts may not allow a contract defense to reshape traditional individualized arbitration by mandating classwide arbitration procedures *without the parties' consent.*"[13]

- "Congress has instructed that arbitration agreements like those before us must be enforced *as written*."[14]

Possibly foreshadowing a reversal, these quotes reinforce the court's longstanding position that arbitration agreements must be enforced "as written" — no more or no less.

Don't Forget About Stolt-Nielsen

The most critical case implicated in Lamps Plus is the high court's 2010 decision in *Stolt-Nielsen v. Animalfeeds International Corp*.[15] The dissenting jurist of the Ninth Circuit's Lamps Plus panel referred to the majority's decision as a "palpable evasion of Stolt-Nielsen."[16]

In Stolt-Nielsen, the U.S. Supreme Court held that "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."[17] Justice Samuel Alito, writing for the 5-3 majority, held that "class action arbitration changes the nature of arbitration to such a degree that it cannot be presumed the parties consented to it by simply agreeing to submit their disputes to an arbitrator."[18]

The Ninth Circuit panel acknowledged Stolt-Nielsen's holding that parties may only be compelled to class arbitration absent contractual agreement.[19] Yet, the panel held that there is a difference in the Stolt-Nielsen analysis between silence and an absence of agreement. The panel noted that the parties in Stolt-Nielsen stipulated that there was "no agreement" on class arbitration.[20] Yet, in Lamps Plus, there was no such stipulation. Accordingly, the Ninth Circuit held a reasonable interpretation of the agreement — in accordance with California contract law principles — authorized class arbitration.[21]

The Supreme Court will now resolve the dispute.

Looking Forward

Predicting 5-4 U.S. Supreme Court decisions is never an easy task. Yet, given the justices' positioning in Epic Systems, the court seems poised to reaffirm the principles of Stolt-Nielsen and hold that class arbitration cannot be forced upon a party in the absence of clear, contractual language authorizing class arbitration.

A reversal in Lamps Plus would be a major win for employers. On the heels of Epic Systems' "greenlighting" of class and collective action waivers, a Lamps Plus reversal would slam the door shut on class arbitration unless specifically authorized by the parties — exactly the one-two punch that employers have been looking forward to.

Notes

[1] No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018).

[2] No. 17-988, 2018 WL 398496 (U.S. April 30, 2018).

[3] No. 5:16-cv-00577-DMG-KS (C.D. Cal. filed March 29, 2016).

[4] *Varela v. Lamps Plus Inc.*, No. CV 16-577-DMG (KSx), 2016 WL 9110161, at *1 (C.D. Cal. July 7, 2016).

[5] Petition for a Writ of Certiorari at 6, Lamps Plus Inc. v. Varela, No. 17-988 (U.S. Jan. 10, 2018) (citation omitted).

[6] Varela, 2016 WL 9110161, at *6-7.

[7] Id. at *6.

[8] *Varela v. Lamps Plus Inc.*, 701 F. App'x 670, 672 (9th Cir. 2017) (alteration in original) (citation omitted).

[9] Id. at 673.

[10] Id.

[11] Petition for a Writ of Certiorari at i, *Lamps Plus Inc. v. Varela,* No. 17-988 (U.S. Jan. 10, 2018).

[12] Epic Systems, 2018 WL 2292444, at *5.

[13] Id. at *7 (emphasis added) (citing *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 351 (2011)).

[14] Id. at *17 (emphasis added).

[15] *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp*., 559 U.S. 662 (2010).

[16] Varela, 701 F. App'x at 673 (citing Stolt-Nielsen, 559 U.S. at 684-85).

[17] Stolt-Nielsen, 559 U.S. at 684.

[18] Id. at 685.

[19] Varela, 701 F. App'x at 672 (citing Stolt-Nielsen, 559 U.S. at 684).

[20] Id.

[21] Id. at 673.

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