



Lamps Plus: U.S. Supreme Court Further Limits Class Arbitration

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On April 24, 2019, the U.S. Supreme Court held that ambiguous arbitration provisions cannot be used to compel class arbitration. *Lamps Plus v. Varela*, No. 17-988, 2019 WL 1780275 (April 24, 2019). This 5-4 decision expands on the Court's prior class arbitration decision, *Stolt-Nielsen SA v. AnimalFeeds International*, 559 U.S. 662 (2010), where the Court held that silence on class arbitration was not enough to compel class arbitration. In *Lamps Plus*, the Court now holds that ambiguity is also not enough. The decision suggests that only agreements that clearly authorize class arbitration will support compelling a class arbitration over the objection of one of the parties. But the decision also leaves to lower courts to interpret when agreements are ambiguous and when agreements clearly authorize class arbitration, so litigation over the issue will continue.

Prior Supreme Court Case Law Left Open Questions Regarding Whether Class Arbitration Was Authorized.

Lamps Plus is the latest Supreme Court decision on class arbitration in the last several years. In *Stolt-Nielsen*, the parties stipulated in the lower court that their arbitration agreement was silent as to class arbitration. The Supreme Court, stating that "arbitration is a matter of consent, not coercion", held that an agreement to arbitrate does not entail an agreement to **class** arbitration. *Stolt-Nielsen*, 559 U.S. at 685 ("An implicit agreement to authorize class-action arbitration, however, is not a term that the arbitrator may infer solely from the fact of the parties' agreement to arbitrate."). The Court based its holding on its finding that class arbitration was fundamentally different than individual arbitration, so an agreement to class arbitration could not be inferred from mere silence on the issue. *Id.* ("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.").

Three years later, in *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564 (2013), the Court unanimously permitted class arbitration to proceed, but its holding was very limited. In *Oxford*, the parties stipulated that the arbitrator, rather than a Court, should decide whether the agreement permitted class arbitration. The arbitrator ruled that the agreement did permit class arbitration, and while the Court affirmed, it did so under an extremely deferential standard of review. The Court in *Oxford* held that it could not overrule, no matter how flawed the arbitrator's contractual interpretation was, so long as the arbitrator was trying to interpret the contract. *Oxford*, 569 U.S. at 569 ("the sole question for us is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong."). Thus, *Oxford* provided little guidance on when a court should conclude that an agreement authorizes class arbitration.

The Ninth Circuit Permitted Class Arbitration Under an Ambiguous Agreement

In *Lamps Plus*, the Ninth Circuit affirmed the trial court's decision to compel class arbitration, despite noting that the agreement was ambiguous as to class arbitration. On the one hand, the agreement broadly required arbitration "in lieu of any and all lawsuits or other civil legal proceedings relating to my employment." *Lamps Plus v. Varela*, 701 Fed. App'x. 670, 672 (9th Cir. 2017). On the other hand, the agreement used language suggesting that any arbitration would be individual to the employee and the employee's individual employment. *Id.* (agreement waived "any right *I* may have to file a lawsuit or other civil action or proceeding relating to **my** employment.") (emphasis added). The Court found the agreement ambiguous and thus interpreted the agreement against the drafter (the employer) to conclude the agreement authorized class arbitration. *Id.* at 673.



The Supreme Court Now Holds Ambiguity is Not Enough for Class Arbitration.

The Supreme Court reversed the 9th Circuit and held that an ambiguous agreement is not enough to compel class arbitration. After finding that appellate courts had jurisdiction over decisions compelling class arbitration, the majority deferred to the Ninth Circuit's determination that the contract was ambiguous on class arbitration. *Lamps Plus*, 2019 WL 1780275 at *4. Notably, Justice Thomas (who joined the five-justice majority) believed the agreement was silent as to class arbitration, while Justices Kagan, Breyer, and Ginsburg believed the agreement unambiguously permitted class arbitration. *Id.* at *8, *16–*17. But the majority reached no independent determination of whether the agreement was ambiguous; it simply deferred to the Ninth Circuit's conclusion that it was.

Once it found the agreement was ambiguous, the Court held that the Federal Arbitration Act “requires more than ambiguity” to compel class arbitration. *Lamps Plus*, 2019 WL 1780275 at *4. The Court repeated its conclusion from *Stolt-Nielsen* that “arbitration is a matter of consent, not coercion”, and noted that class arbitration is fundamentally different from individual arbitration. *Id.* at *5 (“Class arbitration ... sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment.”). Given those differences, the Court held that an ambiguous agreement could not support class arbitration. *Id.* at *8 (“Courts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis.”)

The Court also rejected the Ninth Circuit's reliance on the general rule of interpreting ambiguous contracts against the drafter, finding the rule was based on public policy considerations rather than attempting to discern the parties' intent. *Id.* at *6–*7.

The four dissenting Justices advanced several arguments. Justice Breyer denied the Court had jurisdiction at all. Justice Ginsburg, who focused more upon the consequences of the majority's holding, maintained that the underlying dispute in this case “cries out for collective treatment.” *Lamps Plus*, 2019 WL 1780275 at *10. And Justice Kagan, in a portion of her dissent joined by all four dissenting justices, believed the majority should have accepted the state-law rule of interpreting an ambiguous contract against the drafter.

Lamps Plus Will Restrict Class Arbitration, But Further Litigation is Likely.

The Court continues to restrict class arbitration: *Stolt-Nielsen* held that silence was not enough to compel class arbitration, and *Lamps Plus* raises that bar by holding ambiguity is also not enough. But the majority's opinion gives lower courts room to reach a different outcome. Because the majority simply deferred to the Ninth Circuit's conclusion that the agreement was ambiguous as to class arbitration, a lower court that finds an agreement (even a similar agreement) unambiguously permits class arbitration can order class arbitration without violating *Lamps Plus*. Thus, further litigation is likely on the issue of how to interpret arbitration provisions.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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