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The Supreme Court Will Rule on Data Breach Class Arbitration Suit

Article By:

Jason C. Gavejian

Maya Atrakchi

The U.S. Supreme Court recently granted a petition for review of a data breach lawsuit addressing the issue of whether parties can pursue a class arbitration when the language in the arbitration agreement does not explicitly allow for such, *Lamps Plus, Inc. v. Varela , No. 17-988, certiorari granted April 30, 2018*. The Court will have the opportunity to clarify its 2010 decision in *Stolt-Nielsen v. AnimalFeeds International Corp.*, 559 U.S. 662 (2010) in which the Court ruled that parties cannot be forced into class arbitration, "unless there is contractual basis for concluding [they] agreed to do so".

The petition for a writ of certiorari brought by Lamps Plus, a lighting retailer, presented the issue, "[w]hether the Federal Arbitration Act (FAA) forecloses a state-law interpretation of an arbitration agreement that would authorize class arbitration based solely on general language commonly used in arbitration agreements." Lamps Plus argues that the 9th Circuit panel erred in ruling that the company must participate in a class arbitration of an employee's claims when the employment agreement did not state that class arbitration was available. The employee's claims arise from an incident of identity theft, as the result of a phishing attack, in which a third party impersonating a Lamps Plus employee convinced a fellow Lamps Plus colleague to send copies of W-2 forms for multiple Lamps Plus employees.

The employment agreement between the named plaintiff, Frank Varela, and his employer, Lamps Plus, included an arbitration clause, however it was silent on whether the clause also allowed for class arbitration. The 9th Circuit majority ruling stated that "perhaps the most reasonable" interpretation of that agreement allows for class arbitration. The circuit court analogized how Varela waiving his "right…to file a lawsuit or other civil action or proceeding" and "any right…to resolve employment disputes through trial by judge or jury," clearly also includes waiving his right to class action lawsuits, even though the agreement does not explicitly state such.

In its petition to the Supreme Court, Lamps Plus emphasized that, "This court could not have been clearer that, in light of the fundamental differences between class and individual arbitration, the FAA prohibits exactly what the panel below did here: inferring '[a]n implicit agreement to authorize class action arbitration from the fact of the parties' agreement to arbitrate,".

Varela, on the other hand, relying on the 9th Circuit analysis, argued that the circuit court decision is consistent with the high court's decision in *Stolt-Nielsen*, the FAA, and California contract law principles. "The decision creates no inter-circuit conflict and does not threaten to impose class arbitration wholesale on parties who did not agree to it. It offers only a reasonable interpretation of a single contract to determine the parties' intent in light of background principles of state contract law," Varela stated.

The Supreme Court will now clarify its decision in *Stolt-Nielsen*, and will settle an ongoing circuit split over whether, irrespective of state contract law, an agreement that does not explicitly include class arbitration can nonetheless authorize it. The Court's decision will have major implications for employers, well beyond the data breach context. Regardless of how the Court ultimately rules, companies are advised to include unambiguous language in their employment agreements on whether class arbitration is available.

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