U.S. Supreme Court Rules that Class-Wide Arbitration is Appropriate Only When the Parties Specifically Agree

Client Advisories

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Consumers, employees, and businesses commonly sign agreements that contain provisions that require disputes to be resolved by arbitration, rather than in the courts. Nevertheless, it is not uncommon for parties to these agreements to file suit in court, despite the arbitration provisions. But just because a dispute begins in court, does not mean it has to stay there.

In recent years, the United States Supreme Court has handed down a number of decisions that have addressed the issue of parties' filing lawsuits despite the applicability of enforceable arbitration agreements. These cases have interpreted the Federal Arbitration Act ("FAA") and protected businesses' and employers' ability to require that disputes with employees and consumers be submitted to arbitration. The latest such decision was *Lamps Plus Inc. v. Varela*, which the Court decided last month.

Lamps Plus involved a cyberattack. A hacker tricked a Lamps Plus employee into providing the hacker with the tax information for approximately 1,300 Lamps Plus employees. Later, a fraudulent tax return was filed on behalf of Varela, one of the affected employees. Varela brought a class-action lawsuit against Lamps Plus in federal court on behalf of the affected employees. However, he had signed an arbitration agreement when he began his employment, and Lamps Plus moved to compel arbitration. Although the district court granted the motion, it compelled arbitration on a class-wide, rather than an individual, basis. On appeal, the Ninth Circuit found that the agreement was ambiguous with regard to class arbitration, but affirmed the decision to compel class arbitration, relying upon the state law principle of interpreting contracts against the party that drafted them.

However, the Supreme Court reversed. Chief Justice Roberts began his opinion for the Court by noting that State-law contract-interpretation principles must give way to the policy objectives behind the FAA, which requires courts to enforce arbitration agreements according to their terms. The Court then noted the fundamental differences between individual arbitration and class arbitration. The former offers the benefits of

lower costs, greater efficiency, and speed, while the latter sacrifices these advantages in such a way that the arbitration could end up looking like standard litigation. Because of these fundamental differences, courts may order class arbitration only if the parties' clearly intended to agree to it. The state law contract interpretation principle of interpreting ambiguous contracts against the party that drafted them was insufficient to compel a drastic diversion from standard arbitration practice, which very commonly involves individual, rather than class, arbitration.

The Court's decision is in line with its recent cases construing the FAA's policy of enforcing arbitration agreements as they are written. However, it is important for businesses to remember that arbitration provisions in agreements should be tightly drafted and as clearly as possible reflect the terms under which arbitration is intended to take place, whether the issue is potential class arbitration or a myriad of other factors that come into play. Decisions like *Lamps Plus Inc.* and other cases in the federal and state courts are occurring with considerable frequency, addressing the finer points of arbitration law and, in some cases, refusing to enforce arbitration agreements. It would be prudent to review your arbitration agreements with legal counsel now, before a lawsuit is filed, to ensure that your intentions are spelled out and will not be frustrated. A clear agreement will increase the likelihood that your dispute will be decided where you intended.

If you have any questions about the evolving law in this area, would like your arbitration agreements reviewed, or you are involved in litigation concerning the scope or enforceability of an arbitration provision, contact Robert T. Egan at regan@archerlaw.com or 856-354-3079.

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Attachments

Client Advisory- U.S. Supreme Court Rules that Class-Wide Arbitration is Appropriate Only When the Parties Specifically Agree