Who Decides Whether Arbitration Will Include Class Claims? California High Court Says Ambiguous Agreements May Be Decided in Favor of Workers

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***Executive Summary*:** In a decision that will likely be seen as a win for employees, a sharply divided California Supreme Court ruled that the question of whether a court or an arbitrator decides if an arbitration agreement permits class claims should be determined on a case-by-case basis, specifically focusing on the agreement's terms and resolving any ambiguities in favor of the non-drafting party. Given the high stakes nature of class proceedings and limited review of arbitrators' rulings, we strongly recommend all employers seeking to avoid class arbitration have their agreements reviewed.

In a 4-3 decision, a slim majority of the California Supreme Court in *Sandquist v. Lebo Automotive, Inc.*, Case No. S220812, recently affirmed an appellate court decision finding that the question of whether a court or an arbitrator decides if an arbitration agreement permits class claims must be resolved by looking at the terms of the agreement. In so ruling, the majority disagreed with federal appellate courts which have held that such questions are for a court, not an arbitrator, to decide. The majority then went on to examine the agreement at issue. Ultimately, the majority found that class arbitration was available to the plaintiff because the agreement broadly allowed for any employment-related disputes to be resolved by an arbitrator. The majority further reasoned that because the agreement was silent on whether it prohibited an arbitrator from deciding the availability of class arbitration, any ambiguity would be resolved against the drafting party's (in this case, the employer's) interpretation and in favor of arbitration.

The decision will likely embolden the plaintiffs' bar to file more class actions in arbitration, especially in instances where an employer's arbitration agreements are silent or ambiguous on whether class action procedures are available in arbitration. Given the limited review available in arbitration, employers will likely face higher risks in arbitration should the arbitrator decide that class action procedures are available.

Employers seeking to avoid class arbitration are strongly advised to have their arbitration agreements reviewed by experienced employment law counsel to remove any ambiguities concerning the availability of class action procedures.

If you have any questions regarding this Alert please feel free to contact the author, David L. Cheng, dcheng@fordharrison.com, counsel in our Los Angeles office. You may also contact the FordHarrison attorney with whom you usually work.