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Epic Decision by Supreme Court Orders Arbitration, Prohibits Class Action

Epic is notable, not only for its precise enforcement of the agreements to arbitrate, but also for the valuable lessons it imparts regarding statutory construction and judicial restraint.

By **Michael A. Sabino and Anthony Michael Sabino** | June 05, 2018

For decades now, arbitration has time and again proven its worth, in the main because of the efficiency and economy of its individualized resolution of disputes, and for its concomitant exclusion of more cumbersome and expensive proceedings, such as class actions. Yet there are those who insist agreements to arbitrate disputes on a one-to-one basis are voided when a complaining party seeks to represent a class of similarly situated claimants.



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To be sure, an imposing line of Supreme Court precedents have soundly rejected the latter proposition. Today we add *Epic Systems Corp. v. Lewis* to that body of jurisprudence. In this newest ruling, the high court rejected the plaintiffs' claims to a right to institute class litigation, and bid all parties to return to the arbitral forum. *Epic* is notable, not only for its precise enforcement of the agreements to arbitrate, but also for the valuable lessons it imparts regarding statutory construction and judicial restraint. Before proceeding, however, the discussion of a few preliminary matters will assist in better comprehending the import of this *Epic* holding.

The Federal Arbitration Act

As posited by the *Epic* Court, arbitration carries "the promise of quicker, more informal, and often cheaper resolutions." Notwithstanding contemporary recognition of arbitration's unquestioned benefits, it must be remembered that once courts routinely refused to enforce agreements to arbitrate.

Congress brought this to an end in 1925 by promulgating the Federal Arbitration Act, which proclaimed a strong federal policy favoring arbitration. The FAA renders "valid, legal, and enforceable" any contractual agreement to arbitrate. If a party refuses to honor its obligation to arbitrate, it can be compelled to do so. And so, the FAA constitutes the first cornerstone of our introductory analysis. Next, we review the precedents which so informed this most recent holding.

Bedrock Precedents Favoring Arbitration

A plethora of high court cases have unequivocally enforced contracts to arbitrate on a one-to-one basis, including venerable decisions less than a decade old refuting assertions that the nominal right to proceed on behalf of a class of claimants eradicates the obligation to arbitrate. For our purposes here, we need exposit only three such landmarks.

Shearson/American Express Inc. v. McMahon was a bellwether case for individualized arbitration on Wall Street and elsewhere. There Justice Sandra Day O'Connor made abundantly clear that even valuable and complex federal claims such as securities fraud could be the subject of arbitration proceedings, and not courtroom litigation, provided the parties had contracted for alternative dispute resolution. *McMahon* was the watershed by which the predominant practice on Wall Street has long called for the arbitration of most customer/stockbroker and employee/firm disputes.

Stolt-Nielsen S.A. v. Animalfeeds International Corp. provided one of the first instances where a party contended it was entitled to arbitrate class claims. Writing for the court, Justice Alito opined that arbitration is a matter of consent, not coercion. Courts can only enforce the bargain that the parties voluntarily reached, and if that accord does not accommodate collective action, then class proceedings are barred.

Stolt-Neilsen further posited that the rules of class actions are antithetical to the individualized nature of arbitration. Therefore, any right to bring class claims before an arbitrator must be explicit, and never inferred. Finding no such stipulation in that case, the court returned the parties to one-to-one adjudication.

Stolt-Neilsen was soon followed by *AT&T Mobility, LLC v. Concepcion*, where the claimants had agreed to arbitrate any disputes with their telecom provider. Subsequently, they claimed a state law doctrine negated the arbitral accord, and they should be permitted to litigate a class action instead. In one of his most formidable opinions, the late Justice Scalia declared that such state law obstacles to arbitration had been eradicated by the FAA in 1925, and, furthermore, these erstwhile class representatives had lawfully contracted away any right to proceed as class representatives.

Given these powerful declarations by the court that agreements to arbitrate must be enforced, and parallel rights to class actions can be waived by agreeing to one-to-one resolutions, we now turn to *Epic* as the next step in the natural evolution of this jurisprudence.

‘Epic’—The FAA Controls

Epic consolidated three appeals, only one which the court found illustrative. As a condition of his employment at the “Big Four” accounting firm Ernst & Young, a junior accountant contractually agreed to the individual arbitration of any disputes, to the exclusion of class litigation. Contending federal labor law negated the prior accord, he sought to litigate wage and hour claims on behalf of a class. Not surprisingly, the former employer sought a return to the arbitral forum for one-to-one adjudication.

As its foremost ruling, the Supreme Court unequivocally held the FAA mandated enforcement of the agreement to arbitrate. Writing for the court, Justice Gorsuch reminds the FAA is the embodiment of “a liberal federal policy favoring arbitration agreements,” requiring courts to rigorously enforce arbitral accords according to their terms. Here, the parties contracted for individualized arbitration, and eschewed collective action. “And this much the Arbitration Act seems to protect pretty absolutely,” found the court.

Furthermore, declared Justice Gorsuch, courts are not permitted to “reshape traditional individualized arbitration by mandating classwide arbitration procedures without the parties’ consent.” Here *Epic* embodies the principle announced in *Stolt-Nielsen* that arbitration is a matter of contract, not coercion.

Class Actions Not a Contractual Defense

Next, the court had to decide whether or not the putative class representatives possessed a contractual defense that could defeat the arbitration accord. The plaintiffs here had alleged that their purported right to proceed via a collective action was akin to prosaic counters to contract enforcement, such as fraud or duress, which undeniably hold the power to unravel an agreement to arbitrate.

The high bench rejected that contention. The majority agreed that traditional contract defenses can indeed nullify an arbitral proviso. Yet it is equally true that a defense applicable solely to arbitration or which derives its meaning from the fact that the underlying accord is one to arbitrate does not fall within that category. This would include a defense that targets arbitration by name or “by more subtle methods.” In finding such obstacles antithetical to the FAA, the keen influence of *Concepcion* is much in evidence here.

FAA and Labor Law Not in Conflict

In their final argument, the claimants insisted that the FAA was negated by labor statutes, specifically the National Labor Relations Act (the “NLRA”). Once more, the Supreme Court heartily disagreed.

Observing that these respective bodies of law “have long enjoyed separate spheres of influence,” and have co-existed for over eight decades, the court’s newest justice opined that “[i]t is this court’s duty to interpret Congress’s statutes as a harmonious whole rather than at war with one another.”

Admittedly, federal labor law is protective of employee rights to unionize and bargain collectively. Nevertheless, Justice Gorsuch made the pithy observation that the NLRA “says nothing about how judges and arbitrators must try legal disputes that leave the workplace and enter the courtroom or arbitral forum.”

This segment of *Epic* reflects *McMahon*, wherein the court of three decades ago found harmony, not discord, between the FAA and the federal securities laws.

And for the Next Case...

In a fitting *coda*, Justice Gorsuch imparted the following wisdom for the future. He called for the court to be on guard against “new devices” intended to confound agreements to arbitrate, and to remain steadfast in rejecting efforts by some to “conjure conflicts between the FAA and other federal statutes.”

Next, the court invoked inviolate axioms of constitutional law in support of its *Epic* holding. “[R]espect for separation of powers counsels restraint,” where, as here, “the respective merits of class actions and private arbitration as a means of enforcing the law are questions constitutionally entrusted not to the courts to decide but to the policymakers in the political branches.” In words we shall no doubt see again, Justice Gorsuch proclaimed it is the function of Congress to enact legislation, not for the court to suppose what the law is. And there *Epic* ends, with the agreements for individualized arbitration being enforced in full, and the calls for class actions stoutly rejected.

Closing—An ‘Epic’ Decision Favoring Arbitration

The clarity of *Epic* allows us to be brief. The Federal Arbitration Act has long embodied a strong federal policy favoring arbitration as a valid means of alternative dispute resolution. The Supreme Court continues to uphold agreements to arbitrate, most especially here in the 21st Century, and has consistently found that nominal rights to proceed in class actions do not invalidate arbitral accords. Moreover, this decision bestows valuable lessons in separation of powers and judicial restraint, making it a truly *Epic* decision.

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