CLASS ARBITRATION IN THE UNITED STATES

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ABSTRACT

Arbitration is a private method of resolving disputes that takes place out of traditional courts, according to the decisions of the parties involved in each dispute. An arbitrator or an arbitral tribunal is selected by them to provide a binding decision. Class arbitration is a form of arbitration, but it is commenced by a class representative who is responsible for their own claims or of those involved in a similar context as class members. This inductive research aims to condense and analyze five ruled cases concerning the legitimacy of class arbitration in relation to the controversial awards passed by the American highest court in arbitration terms to infer the potential applicability of such legal framework in the Brazilian justice system.

Keywords: Arbitration. Class Arbitration. Supreme Court of the United States

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INTRODUCTION

Arbitration is a method of dispute resolution that occurs outside the range of traditional judicial procedures. More precisely, the concept of arbitration can be defined as:

> [an] alternative means of dispute resolution with the intervention of one or more persons, empowered by a private agreement, who decide on the basis thereof, without government intervention. The ruling is meant to have the same effect as a judicial award, i.e., it is available to anyone to resolve conflicts [...] upon which the litigants can dispose. (CARMONA, 2012, p. 31).

In this sense, an arbitrator or a panel of arbitrators may be selected by the parties to deliver binding decisions. In light of such consistently employed legal institute emerges a type of multiparty dispute resolution, habitual in the United States:

> [c]lass arbitration is a procedural device allowing plaintiffs to file a claim not only for themselves, but also on behalf of other persons with the same interests. Although only the representative is involved in the proceeding, the class members are equally bound by the outcome. (BLAVI; VIAL, 2016, p. 793).

The core of this article necessarily revolves around the quasi-compulsory nature of class action, contrasted to the consensual basis of individual arbitration. Despite being incipient in terms of legal utilization in the United States, class arbitration is essential due to its relation to collective rights protection as well as private dispute resolution. Through understanding class arbitration, this article aims to deduce a potential applicability of class arbitration – in future instances – in the Brazilian legal system by virtue of an inductive methodology, using the American legal interpretation as foundation. It has been hence necessary to analyze, inspect, and condense five significant class-arbitration cases whose review by the Supreme Court of the United States of America prompted controversial decisions with regard to the (im)plausibility of class arbitration.

1 CASES ANALYSIS AND DISCUSSION

In most modern legal systems, the parties are entitled to resort to admissible solutions, unlike traditional court proceedings, which are differently regulated in comparison with arbitration. The fundamental role of the third party is an intrinsic element of arbitral proceedings, in that the arbitrator renders a binding award. Thus, it may be stipulated by the parties in their contracts that in the event of a dispute for which no friendly settlement has been reached, they either resort to arbitration or a state justice system.

The consent of parties is a key element as well as the binding agreement upon which they previously agreed in terms of numbers of arbitrators, arbitration forum, arbitration rules, arbitration expenses, among others. Nevertheless, should there be inconsistencies as to the terms prior to the proceedings' commencement, a petition to a court may be necessary.

With regard to legislation, the Federal Arbitration Act is a statute enacted in 1925 by the US Congress with the purpose of promoting the private resolution of disputes through arbitration. The FAA stipulates how arbitrated agreements are enforced and provides several interpretations as to the utilization of contracts relative to interstate commerce. As a result of a revision undergone in 2000, the comprehensive adoption of the FAA by twelve states now enforces the arbitration agreement and award in both state and federal law. A thorough arbitration agreement provides binding and limiting effects pursuant to the FAA, and as such there is no resort to judicial review or refusal of arbitration awards.

Despite the legal aspect of arbitration, it is not mandatory that arbitrators be law practitioners, which emphasizes the broad perspective of arbitration when it comes to the level of specialization as suitably concurred by the parties. Furthermore, arbitral proceedings are reputed not only to be ostensibly faster, compared to traditional legal proceedings, but also the opinions resulting from them share no public records, as they are a means of resolving private legal disputes.

About two decades ago, a number of cases, which commenced in the district instances of different confederate states of the USA, went through all different levels of jurisdiction in the justice system of the United States until they reached the Supreme Court. The awards of these cases related to arbitration – and class arbitration more precisely – prompted a heated debate in the field of collective rights and the legitimacy of class arbitration as such.

This research is based on an inductive reasoning, that is, a few cases have been examined in order to infer generalizations within the national legal system and deepen the understanding in the field of class arbitration. Therefore, below are five cases of class arbitration that have been condensed according to factual information, issue, decision, and reasoning. They were analyzed according to the legal foundation for arbitration and class lawsuits.

1.1 GREEN TREE FINANCIAL CORP. V. BAZZLE

This case was argued by the Justices of the US Supreme Court on April 22, 2003, and the decision occurred on June 23, 2003. It concerns a loan contract that had been agreed between Bazzle, and Lackey & Buggs with Green Tree Financial Corp wherein there was an arbitration clause.

Seemingly, Green Tree had failed to provide a form explaining the rights of respondents as to the appointing of their respective attorneys and insurance agents. Once both parties filed a state-court action seeking damages, they then proceeded to class certification. In response, Green Tree requested to stay court proceedings and compel arbitration, to which the court assented and duly certified. After that, Green Tree selected an arbitrator with Bazzle's consent. The arbitrator awarded Bazzle class damages and attorney's fees, which the court then confirmed, prompting an appeal from Green Tree claiming that class arbitration was legally impermissible. The arbitrator selected by Green Tree awarded Lackey & Buggs a similar award as Bazzle's, which ensued another appeal from Green Tree claiming the very same ground. Both cases were withdrawn by the Supreme Court, which took over jurisdiction, consolidated the proceedings, and held that the contracts were silent as to class arbitration, thus allowing class arbitration – and that arbitral proceedings had duly elapsed.

The issue regarding this case is whether the contracts' silence as to class arbitration strictly forbids it. The South Carolina Supreme Court "held that the contracts were silent in respect to class arbitration, that they consequently authorized class arbitration, and that arbitration had properly taken that form" (USA SC, 2002, p. 444).

The US Supreme Court held that the parties had agreed to move to arbitration regarding all disputes. According to the majority of justices, the parties also concurred that an arbitrator, and not a judge, should determine that questions involving the scope of arbitration should be taken to arbitration. The matter is upon which type of arbitration procedures had the parties agreed, i.e., it involves contract interpretation and arbitration proceedings. Whether the contract executed by the parties forbids class arbitration, there had been no arbitration award. Therefore, the competence is necessarily related to the arbitrator, as any contravention to that is against the competence-competence principle, which refers to the power of the arbitrator or the arbitral tribunal to consider and decide disputes regarding its own jurisdiction (NERY, 2016).

1.2 STOLT-NIELSEN S. A. V. ANIMALFEEDS INTERNATIONAL CORPORATION

This case was argued by the Justices of the Supreme Court of the United States on December 9, 2009 and was decided by them on April 27, 2010. AnimalFeeds is a company that ships raw ingredients and executed a charter-party contract with Stolt-Nielsen in the maritime trade wherein there was an arbitration clause.

A class action antitrust lawsuit was filed against Stolt-Nielsen, who had been fraudulently fixing trading prices. Other companies that had executed the same contract

also filed lawsuits against Stolt-Nielsen. The Court of Connecticut held that that dispute was to be resolved through arbitration according to the arbitration clause in the contract. However, that award was reversed by the district court.

The class arbitration was consolidated in the Court of Connecticut because there was a pending appeal against that award. Consequently, the city of New York had been selected as the arbitration site, and so the class would represent all the respective purchasers of chart party services. Later a three-arbitrator panel was formed with the consent of the parties, which also agreed that the arbitration clause in the charter party contract was silent in relation to class arbitration, and that whether class arbitration was permissible or not should be resolved through arbitration.

Arbitration occurred, and the arbitrators held that such arbitration clause permitted class arbitration. Consequently, a lawsuit was filed attempting to reverse the arbitration award because the arbitrators had exceeded their powers when they permitted class arbitration.

The district court reversed the arbitration award, deciding that the arbitrator's ruling had manifestly disregarded the law, since the arbitrators had not taken the law applicable to that case into account. The court of appeals viewed that the maritime laws governing that contract be interpreted according to uses and customs could not be considered, as there was no application of it against class arbitration. Furthermore, the arbitrators had not manifestly disregarded the state law of New York since there is legally nothing that contravenes class arbitration, and as such the Court of Appeals reversed the first award.

The majority of justices of the Supreme Court held that there was no previous agreement in relation to class arbitration legitimacy, and that consequently the companies involved could not move their own disputes to class arbitration.

Imposing class arbitration on the parties that had not concurred that type of proceedings is a violation of the Federal Arbitration Act, as the principal ground for the law is to ensure that private agreements operate according to their own stipulations. Moreover, instead of verifying the arbitration or maritime law, the arbitral tribunal had exceeded its powers in determining its own policy (NERY, 2016). As opposed to the Bazzle's case, in this case there had to be a scrutiny as to whether class action is permissible.

1.3 AT&T MOBILITY LLC V. CONCEPCION

Argued on November 9, 2010, and decided on April 27, 2011, this case discusses a cellular telephone sale-and-service agreement between AT&T Mobility and Concepcion,

in which the contract required that claims be brought in an "individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding" (563 US 333, 2011, p. 1). The Concepcion filed a class action lawsuit against AT&T in a California federal district court alleging that its cellular telephone offer was fraudulent, since they were charged a U$30.22 sales tax on the retail value of the phones that were meant to be free. AT&T attempted to compel arbitration due to the arbitration clause present in the service contract, which the district court denied. Upon appeal, the Ninth Circuit of Appeals then decided that the said clause was unconscionable and unenforceable pursuant to California law as well as the Federal Arbitration Act as it did not expressly or implicitly supersede California law with regard to unconscionability.

The Concepcion argued that the *Discover Bank Rule*, which is based on California's rules and policies against exculpation, prohibits collective-action waivers. Here the opinion of the Court diverges, since they state that the purpose of the FAA, as "evident in the text of §2, 3, and 4, is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings" (563 US 333, 2011, p. 9).

This means that the state law cannot require and enforce class-wide arbitration superseding the individual arbitration in the contract, "even if it is desirable for unrelated reasons" (563 US 333, 2011, p. 17).

Justice Breyer, joined by Justice Kagan, Ginsburg and Sotomayor dissented, explaining that the FAA does not supersede California law, and it is not an obstacle, but a rule of state law that is parallel. They both mean to enforce that certain circumstances can turn any contract unenforceable.

The Supreme Court, in the opinion of Chief Justice Roberts, along with Justice Scalia, Justice Kennedy, Justice Thomas and Justice Alito holds that the Discover Bank Rule is preempted by the FAA, in that it hinders the accomplishment and execution of arbitration purposes and goals.

1.4 OXFORD HEALTH PLANS LLC V. SUTTER

This case, argued on March 25, 2013, and decided on June 10, 2013, in which pediatrician John Ivan Sutter and Oxford Health Plans entered into a Primary Care Physician Agreement, providing primary care health services to patients in Oxford's care network in exchange for reimbursement by Oxford, according to the agreement.

In the contract executed, there is a general arbitration clause stating in part, "No civil action concerning any dispute arising under this Agreement shall be instituted before any court." (reference). Sutter initiated a class action, on behalf of himself as well

as other health care providers under the agreement, against Oxford, alleging breach of contract and violations of New Jersey law.

Oxford moved to compel arbitration, and the arbitrator found that the arbitration clause was so broad that it encompassed any conceivable court action, including class arbitration. Later the arbitrator certified the class, and Oxford moved to vacate that decision in district court arguing that the arbitration clause did not encompass class actions and that the arbitrator exceeded his authority.

The district court denied the motion, and class wide arbitration proceeded. The US Supreme Court, which had decided Stolt-Nielsen S.A. v. AnimalFeeds International Corp, in this case held that an arbitrator exceeded his authority by allowing class arbitration when the parties had no agreement on the issue. Oxford moved for reconsideration from the arbitrator in light of Stolt-Nielsen, and then moved to district court to vacate the arbitrator's most recent award. Both motions were unsuccessful, and on appeal, the US Court of Appeals for the Third Circuit affirmed the award.

The Supreme Court held that the arbitrator's interpretation, deciding that the parties intended to authorize class-wide arbitration, did not exceed his powers. When parties agree to arbitration, the price of that decision is that an arbitrator may not interpret the contract correctly. Under the Federal Arbitration Act a court cannot overrule the arbitrator as long as the arbitrator does provide an interpretation of the contract. The arbitrators did not interpret the contract, and as such there was no agreement that permitted class proceedings.

In other words, there was no contract misinterpretation; however, the arbitrators had relinquished their interpretative role. The arbitrator did not interpret the contract language and could not retrieve any agreement permitting class arbitration, i.e., there was no contract foundation in relation to class procedures (ROQUE, 2014).

1.5 AMERICAN EXPRESS COMPANY *ET AL.* V. ITALIAN COLORS RESTAURANT

Argued on February 23, 2013, and decided on June 20, 2013, this case revolves around the contract executed with merchants that accept American Express credit cards wherein there is a clause affirming that all disputes shall be settled by arbitration. A class action for monopoly power against American Express ensued owing to the overcharging of credit-card rates 30% higher when juxtaposed with rates from other competing companies. Individual arbitration was then compelled as contractually stipulated. In resistance to the motion, a statement of an economist was submitted claiming that arbitral costs would outreach the recovery amount.

The motion was delivered in favor of American Express, and the lawsuit was dismissed. A district-court appeal was filed and the case was remanded for further proceedings on the

basis that the waiver was unenforceable and the individual arbitration was unfounded due to the elevated arbitral costs thereof. As arbitration is a contractual matter, even if there are claims of federal statute violations, the Federal Arbitration Act do not allow for invalidation of a contractual waiver on the elevated expense of individual arbitration. In other terms, increased arbitral costs does not constitute cause for its rejection.

The whole discussion revolves around whether the arbitration clause may be proscribed by American Express preventing the enforcement of class action lawsuits, even if it would compel a sort of arbitration more costly than the actual recovery amount.

Justice Kagan, joined by Justice Bryer and Justice Ginsburg argued that the objective of the Federal Arbitration Act is that of dispute resolution and injury compensation. By preventing any form of sharing and diminishing arbitral expenses, the arbitration clause in the contract of American Express confers immunity from potentially meritorious federal claims, which contradicts the purpose of the FAA. Moreover, the contract infringes the Sherman Act, in that it deprives parties of a chance to oppose allegedly monopolistic practices.

The US Supreme Court, notwithstanding, deemed it enforceable as the prohibitively exorbitant cost related to individual arbitration does not interfere with the fact that courts invalidated a waiver of class arbitration because it is a contractual matter in spite of federal statute violations. Furthermore, the government was to attest that the anti-steering provisions were anticompetitive on the merchants as well as on the cardholders, which in both cases did not hold true. Federal law does not vouch for a claim being resolved affordably. Consequently, it may be more costly to litigate arbitration individually than its actual worth so that it does not negate the right to pursue a statutory remedy, and no exception to the Federal Arbitration Act is applicable.

1.6 OUTCOME

The tug-of-war between respondents, petitioners, and lower and upper courts (Figure 1) revolves around a few issues. Can arbitration clauses include class arbitration waivers? And if so, who decides if they are to be enforced? The courts or the arbitrators? Are silent clauses, less specified clauses, and state rules sufficient to waiver class arbitration? And at last, since the Supreme Court stated that petitioner and respondent need to consent to class arbitration, how is said consent tenable?

The many cases aforementioned show a growing history of understanding how class arbitration fits in the US judicial system. It is inferable from the cases analyzed that the Supreme Court cedes judicial power not only to arbitration contracts but also the arbitrators who will enforce and arbitrate on the matter. When the contracts are formed,

according to the US Supreme Court, they must clearly and unmistakably state that the parties' consent to resolve class actions through arbitration. These decisions paved the way for state individual arbitration and class arbitration to be applied in more recent times.

2 CLASS ARBITRATION TODAY IN THE USA

The rules in class arbitration are deferred to the two largest ADR (Alternative Dispute Resolution) providers, JAMS (Judicial Arbitration and Mediation Services) and the AAA (American Arbitration Association). They both employ state and federal court judges, attorneys, and other ADR professionals to resolve several issues. Both deal with class arbitration for decades; however, in the last few years, their rules of conduct have altered due to the decisions made by the US Supreme Court, as previously analyzed.

FIGURE 1 – Table of Studied Cases

	Green Tree v Bazzle	Stolt-Nielsen v Animal Feeds	AT&T v Concepcion	Oxford Health v Sutter	American Express v Italian Colors
What the CONTRACT says?	Included an Arbitration Clause	Included an Arbitration Clause	Included an Arbitration Clause, but in the "individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding."	Contained a general Arbitration Clause securing in part that no civil action related to any dispute resulting from the agreement should be instituted in any court	Included an Arbitration Clause that prohibits any class action claims
What the RESPONDENTS do?	Moved for Class Certification	Moved for a class-action antitrust lawsuit	Moved for a class-action suit	Moved for a class-action suit	Brought class action lawsuits claiming violation of antitrust laws
What the PETITIONERS does?	Stay court proceeding and compel arbitration	Attempted arbitration so that a panel of arbitrators would determine wheter class arbitration was permited	Attempted arbitration as stated in the service contract	Moved to compel arbitration, and the arbitrator held that the arbitration clause was so general that it included any conceivable court action, even classwide actions. Oxford moved to vacate the decision	Moved to compel individual arbitration under FAA.
What the DISTRICT COURT does?	Certified a class and compeled arbitration	A choice-of-law analysis should have been conducted in order that the federal maritime law be applied whereby it is mandatory that contracts be construed pursuant to custom and usage	Denied AT&T's motion, relying on the California Supreme Court's decision in *Discover Bank* v. *Superior Court*, since it deemed that the arbitration provision was unconscionable.	Denied the motion	Granted the respondents motion that estipulated the high cost of proving antitrust claims, and dismissed the lawsuit
What the COURT OF APPEALS does?	Reversed the District Court	There was no disregard of any state law against class arbitration since the parties had concurred with arbitration	Found the provision unconscionable under California law also as annouced in the *Discover Bank*. Çaster v. *AT&T Mobility LLC*. The *Discover Bank* rule was not preempted by the FAA.	Affirmed the District Court	Reversed and remanded, holding that the respondents would incur prohibitive costs, so the waiver was unenforceable and arbitration could not proceed
What the SUPREME COURT does?	The Court held that the contracts were silent in respect to class arbitration, that they consequently authorized class arbitration, and had proceeded correctly. An arbitrator must determine whether the contracts forbid class arbitration.	Reversed the Court of Appeals	Reversed the lower court order	Kept the lower courts decision	Vacated the judgement and remanded
US SUPREME COURT Decision	The U.S. Supreme Court concluded that it is up for an arbitrator to determine if the contracts forbid class arbitration.	In view of the fact that the parties had not agreed to authorize class arbitration, there was an inconsistency with the Federal Arbitration Act	Held that the Discover Bank Rule preempts "state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives	Held that the arbitrator's interpretation, deciding that the parties intended to authorize class-wide arbitration, did not exceed his powers	Held that the prohibitively high cost of arbitration is not a sufficient reason for a court to overrule na arbitration clause that forbids class action suits

SOURCE: Compiled by the authors (2022)

The AAA has created supplementary rules to help understand this growing and evolving niche of class arbitration. Although class arbitration is deemed as a viable alternative for many cases, they still have to undergo some filtering, as stated in the fourth supplementary rule, as to the US Supreme Court's decisions:

> (a) Prerequisites to a Class Arbitration
>
> If the arbitrator is satisfied that the arbitration clause permits the arbitration to proceed as a class arbitration, [...] or where a court has ordered that an arbitrator determine whether a class arbitration may be maintained, the arbitrator shall determine whether the arbitration should proceed as a class arbitration (AAA, 2003).

JAMS also has a similar procedure when it comes to class action, in their first rule, as stated in their JAMS class action procedures:

> (a) JAMS will not administer a demand for class action arbitration when the underlying agreement contains a class preclusion clause, or its equivalent, unless a court orders the matter or claim to arbitration as a class action.
> [...]
> (c) [...] The Arbitrator has the authority to resolve any inconsistency between any agreement of the parties and these Procedures, and in doing so shall endeavor to avoid any prejudice to the interests of absent members of a class or purported class.

In both cases, class arbitration can only be enforced if the prerequisites are met. The rules explain that the arbitrators have the authority to decide, but only if it is up to them to do so. Class waivers – or as stated above, class preclusion clauses – deny the possibility of keeping the cases as a class.

A thorough study conducted by the Economic Policy Institute is titled and conveys "the growing use of mandatory arbitration" (COLVIN, 2018). The key findings of this report are as follows:

> More than half, namely 53.9 %, of nonunion private-sector employers have mandatory arbitration procedures. Among companies with 1,000 or more employees, 65.1 percent have mandatory arbitration procedures.
> Among private-sector nonunion employees, 56.2% are subject to mandatory employment arbitration procedures. Extrapolating to the overall workforce, this means that 60.1 million American workers no longer have access to the courts to protect their legal employment rights and instead must go to arbitration.
> Of the employers who require mandatory arbitration, 30.1% also include class action waivers in their procedures, i.e., in addition to losing their right to file a

> lawsuit on their own behalf, employees also lose the right to address widespread rights violations through collective legal action.
>
> Large employers are more likely than small employers to include class action waivers. Hence, the share of employees affected is significantly higher than the share of employers engaging in this practice: of employees subject to mandatory arbitration, 41.1% have also waived their right to be part of a class action claim. Overall, this means that 23.1% of private-sector nonunion employees, or 24.7 million American workers, no longer have the right to bring a class action claim if their employment rights have been violated.
>
> Mandatory arbitration is more common in low-wage workplaces. It is also more common in industries that are disproportionately composed of women workers and in industries that are disproportionately composed of African American workers.
>
> Among the states, mandatory arbitration is especially widespread in California, Texas, and North Carolina. However, in all of the 12 largest states by population over 40% of employers have mandatory arbitration policies (COLVIN, 2018).

The mentioned class certification denial increasingly prevents employees from turning their individual cases into class arbitrations.

There is a lack of data concerning the amount of class arbitrations in the USA. Nevertheless, it is visible, as shown in the statistics, that the employers retain the advantage as to arbitration, since the jurisprudence set forth by the US Supreme Court is in favor of class waivers, leaving the worker to deal with individual arbitration, which can be discouraging at times, and unfeasible other times.

An unprecedented case for most union workers was the *National Labor Relations Board* v. *Murphy Oil USA, Inc.* The 5-4 opinion released in May 2018 held what had been held several instances before, as it was analyzed in the above cases: in the FAA, as instructed by the Congress, it is explicit that arbitration agreements providing for individual arbitration must be enforced, and nothing may suggest otherwise.

The last two important cases reviewed by the SCOTUS: *Lamp Plus Inc* v. *Varela* and *Henry Schein, Inc., et al* v. *Archer & White Sales Inc.* inform of the state of class arbitrations of late. In other words, it is inferable that class waivers are enforceable unless they are “clearly and unmistakably” showing the opposite.

3 CONCLUSION

Arbitration is an old form of resolving disputes, and it has evolved throughout the years as a means of alternatively settling issues in an efficient method, as opposed to potentially cumbersome litigation. The FAA, as enacted by the US Congress, provides judicial facilitation in private disputes, and Section 2 is its cornerstone, in that it provides that an arbitration agreement "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract" (9 U.S.C. §2, 2011).

When the subject is class arbitration, which is a relatively new procedural mechanism, the US Supreme Court has dealt and reasoned with it haphazardly. The five decisions analyzed in the present article, along with other more minor decisions, seem to lack a definite aim.

> In order for arbitration, like other aspects of contemporary business, to function effectively, it requires a stable, predictable and durable legal framework; it does not require, nor benefit from, unyielding jurisprudential logic and rhetorical display by whatever majority commands the Court in a particular Term. […] The U.S. legal regime for arbitration would benefit enormously if the Supreme Court were able to provide comparable consistency and clarity in this country (BORN and SALAS, 2012).

These fixed results, despite uncertain, appear to only side with employers and their mandatory arbitration agreements that waive class action. In "the erratic course of ushering in class arbitration in *Bazzle*, followed by largely or entirely ushering it out again less than a decade later in *Stolt-Nielsen* and *Concepcion*, is […] a serious failure for the Court" (BORN and SALAS, 2012). What is more, by forcing employees, workers, customers, and anybody who enters into a legal agreement that institutes arbitration as method of resolution, to only have individual arbitration as a means of resolution, would forcibly opt them out of procedures that could favor them. While class arbitration is more tenable to individuals, due to many factors, but specially its high costs, the SCOTUS' decision of enforcing individual arbitration overwhelmingly favors employers.

This analysis exposes the fact that class arbitration is still commencing, and much needs doing in order that this institute be properly used and understood, whether by the people drafting the legal contracts, the people signing them, the arbitrators

resolving the issues, or the Courts when deciding the disputes. Arbitration may be a solution for any private dispute resolution, but it must be correctly applied for it to be the answer it can truly be.

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