

American Express Co. v. Italian Colors Restaurant: Supreme Court Upholds Contractual Provision Waiving Class Arbitration

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On June 20, 2013, the Supreme Court decided a case regarding waivers of class arbitration that could have potentially wide-ranging implications in antitrust and other cases. See *American Express Co. v. Italian Colors Rest.*, Slip Op. No. 12-133 (S. Ct. June 20, 2013) (“AMEX III”). The case involved the question of whether a contractual arbitration provision waiving the right to arbitrate on a class basis is enforceable under the Federal Arbitration Act (“FAA”), even when a plaintiff can demonstrate that the cost of prevailing on the claim in individual arbitration would likely exceed any potential recovery.

In a 5-3 decision, the Supreme Court held that the FAA’s strong mandate favoring arbitration was not overcome where arbitrating a federal antitrust claim on an individual basis would be prohibitively expensive. The Court reasoned that the antitrust laws evince no congressional command to bar class waivers.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Arthur J. Burke

+1 212 450 4352
+1 650 752 2005
arthur.burke@davispolk.com

Arthur F. Golden

+1 212 450 4388
arthur.golden@davispolk.com

James W. Haldin

+1 212 450 4059
james.haldin@davispolk.com

Ronan P. Harty

+1 212 450 4870
ronan.harty@davispolk.com

David B. Toscano

+1 212 450 4515
david.toscano@davispolk.com

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