

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.

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