Case Name and Number: *Viking River Cruises, Inc. v. Moriana*, No. 20-1573

Introduction: Under California law, an employee may bring a lawsuit under California's Private Attorneys General Act (PAGA) to enforce California labor law. The employee can bring two types of claims – claims on her own behalf and "representative claims" on behalf of other employees. California courts have interpreted PAGA to prohibit employees from waiving the right to assert representative claims. Yesterday, the Supreme Court held that the Federal Arbitration Act (FAA) preempts that California rule.

Background: Under California's PAGA statute, an employee may bring an action against her employer for violations of California labor law. The employee also may bring representative claims on behalf of other current or former employees.

In this case, Moriana filed a PAGA action in California court against her former employer, Viking River Cruises. She asserted individual claims and representative claims. Moriana's employment contract had an arbitration agreement that required arbitration of her disputes on an individual basis and prohibited representative actions. Viking moved to compel arbitration of Moriana's individual PAGA claims and to dismiss her representative PAGA claims. The court held that the waiver provision was invalid because PAGA claims cannot be split into arbitrable individual claims and non-arbitrable representative claims.

Issue: Whether the FAA preempts California's rule prohibiting enforcement of individual arbitration agreements in the context of PAGA actions.

Court's Holding: In an opinion written by Justice Alito, joined in full by Justices Breyer, Sotomayor, Kagan, and Gorsuch, and joined in part by Chief Justice Roberts and Justices Kavanaugh and Barrett, the Supreme Court reversed, holding that the FAA preempts California's rule.

The Court explained that prohibiting parties from agreeing to arbitrate only individual PAGA claims coerces them into giving up their rights under the FAA, because they either must "go along with an arbitration in which the range of issues under consideration is determined by coercion rather than consent, or else forgo arbitration altogether." The Court further held that the FAA does not permit California to impose a regime in which "[t]he only way for parties to agree to arbitrate *one* of an employee's PAGA claims is to also 'agree' to arbitrate *all other* PAGA claims in the same arbitral proceeding." The Court explained that conditioning arbitration on allowing an employee to seek remedies for harms suffered by other employees "is incompatible with the FAA."

The Court therefore held that the FAA requires enforcement of the parties' agreement to arbitrate Moriana's individual PAGA claim. The Court then held that Moriana's remaining claims – the representative claims – must be dismissed, because under California law a PAGA claimant may bring representative claims only if she is also asserting individual claims.

Justice Sotomayor authored a concurrence, joining the Court's opinion in full but arguing that California may revisit its rule that a PAGA claimant may bring representative claims only if she is also asserting individual claims.

Justice Barrett authored a concurrence, joined by Justice Kavanaugh and joined in large part by Chief Justice Roberts, stating that much of the Court's discussion was unnecessary to the result, given that "reversal is required under [the Court's] precedent because PAGA's procedure is akin to other aggregation devices that cannot be imposed on a party to an arbitration agreement."

Justice Thomas authored a dissent, adhering to his long-standing view that the FAA does not apply in state courts.

Mayer Brown filed an *amicus* brief in support of Viking River Cruises on behalf of the Chamber of Commerce of the United States of America, the California Chamber of Commerce, and the National Federation of Independent Business Small Business Legal Center.

Read the opinion here.