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Court Upholds Arbitrator's Decision to Authorize Class Arbitration

In *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064 (2013) (*Oxford Health*) the Supreme Court reaffirmed the limited nature of judicial review of arbitrators' decisions in upholding an arbitrator's decision to authorize class arbitration in the face of a silent arbitration clause.

The defendant, a pediatrician, provided services to patients insured by the plaintiff pursuant to a contract that contained an arbitration clause. Despite the arbitration clause, the defendant filed a proposed class action in New Jersey Superior Court on behalf of himself and other New Jersey physicians under contract with the plaintiff, alleging that the plaintiff failed to make payments to the doctors. The court granted the plaintiff's motion to compel arbitration. The parties then agreed that the arbitrator should decide whether their contract authorized class arbitration. The arbitrator concluded that it did.

The plaintiff filed a motion in federal court to vacate the arbitrator's ruling, alleging that the arbitrator had "exceeded [his] powers" under §10(a)(4) of the *Federal Arbitration Act*. The district court denied the motion, and the decision was affirmed by the Third Circuit. The arbitration proceeded. After the Supreme Court's decision in *Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010), which held that an arbitrator may employ class action procedures only if the parties have authorized them, the plaintiff asked the arbitrator to reconsider his decision. The arbitrator found that *Stolt-Nielsen* had no effect on the case because unlike in *Stolt-Nielsen*, where the parties stipulated they had not reached an agreement on class arbitration, the parties to this case disputed the meaning of their contract, which required the arbitrator to interpret it. The arbitrator interpreted the parties' contract to allow for class arbitration.

Following the arbitrator's decision, the plaintiff renewed his motion to vacate. The district court denied the motion and the Third Circuit again affirmed.

The Supreme Court stated that the "sole question" was "whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." The Supreme Court then found that the arbitrator's decisions were "through and through, interpretations of the parties' agreement." The Supreme Court focused on the fact that the arbitrator carefully considered the language of the parties' contract and determined whether it reflected an agreement to allow for class arbitration.

The plaintiff relied on *Stolt-Nielsen*, but the Supreme Court found that the plaintiff's reading of *Stolt-Nielsen* was erroneous. The Court explained that the arbitrator's decision in *Stolt-Nielsen* was overturned because the decision lacked any contractual basis at all for ordering class arbitration—not, as the plaintiff argued, a "sufficient" one. In addition, the Supreme Court distinguished *Stolt-Nielsen*, finding that the situation in that case was unusual because the parties had stipulated that they had not reached an agreement on class arbitration. Here, in contrast, the Supreme Court found that the arbitrator construed the contract and found that it allowed for class arbitration. To overturn that decision, the Supreme Court would have to find that the arbitrator incorrectly interpreted the parties' agreement. Such a result is not permitted under §10(a)(4), which allows courts to vacate an arbitrator's decision "only when the arbitrator strayed from his delegated task of interpreting a contract, not when he performed that task poorly." The Supreme Court went on to state that "[s]o long as the arbitrator was 'arguably construing' the contract—which this one was—a court may not correct his mistakes under §10(a) (4)."

In conclusion, the Supreme Court stated that the arbitrator did exactly what the parties had asked him—he interpreted their contract—and whether his decision was correct was not to be decided by the courts. Under Section 10(a) (4), "the question for a judge is not whether the arbitrator construed the parties' contract correctly, but whether he construed it at all." Because the arbitrator in *Oxford Health* clearly construed the parties' agreement, the Supreme Court affirmed the decision of the Third Circuit.

In a footnote, the Supreme Court left open a remaining issue—whether or not the availability of class arbitration is a question of arbitrability for the courts to decide.

In a concurrence, Justice Alito expressed concern for absent class members who "never conceded that the contract authorizes the arbitrator to decide whether to conduct class arbitration." Justice Alito went on to write that because there is "no reason to think that the absent class members ever agreed to class arbitration, it is far from clear that they will be bound by the arbitrator's ultimate resolution of this dispute." Alito warned that "[c]lass arbitrations that are vulnerable to collateral attack allow absent class members to unfairly claim the 'benefit from a favorable judgment without subjecting themselves to the binding effect of an unfavorable one.'" Alito concurred in the Court's decision because the plaintiff had consented that the availability of class arbitration was a question for the arbitrator.

Following the *Oxford Health* decision, should parties wish to avoid the potential for class arbitration, it would be wise to explicitly prohibit such in the arbitration agreement. It will be interesting to see whether the Supreme Court has the occasion in the future to address the arbitrability issue as well as any res judicata issues that could occur from class arbitration decisions.

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