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U.S. Supreme Court Bars Class-Action Arbitration Absent Contractual Agreement

Client Alert

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In *Stolt-Nielsen S.A. v. AnimalFeeds International Corporation*, the United States Supreme Court recently held that a party may not be compelled under the Federal Arbitration Act ("FAA") to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so. No. 08-1198 (decided April 27, 2010). In an opinion authored by Justice Alito, the Court ruled that the arbitrators had exceeded their powers by imposing their own policy choice favoring class arbitration instead of applying a rule of decision for construing silent arbitration clauses derived from either the FAA, maritime or New York state law.

The *Stolt-Nielsen* decision stems from an antitrust class action brought by AnimalFeeds against Stolt-Nielsen and other shipping companies for alleged price fixing. The parties stipulated that the arbitration provision was silent as to whether class arbitration was permissible and agreed to submit the question to a panel of arbitrators. The United States Court of Appeals for the Second Circuit confirmed the panel's ruling that permitted AnimalFeeds to pursue its claims via a class-wide arbitration setting. In so doing, the Second Circuit reasoned that the class claims were arbitrable because "construing the arbitration clause to permit class arbitration did not manifestly disregard the law."

In reversing the Second Circuit, Justice Alito, writing for the 5-3 majority (with Justice Sotomayor recusing herself), chastised the arbitration panel for proceeding as if it had the authority of a common law court to develop what it viewed as the best rule to be applied when the parties' agreement was silent as to class arbitration. The Court concluded that imposing class arbitration on parties who had not explicitly consented was "fundamentally at war with the foundational FAA principle that arbitration is a matter of consent, not coercion." The Court's holding was premised on its belief that class arbitration fundamentally changes the nature of arbitration to such a degree that it cannot be presumed that parties agreed to it by simply agreeing to submit their bilateral disputes to an arbitrator.

The importance of the *Stolt-Nielsen S.A.* decision is considerable. First, the decision will likely be used by defendants in (the approximately 200 pending) class arbitration proceedings to argue that all state laws that have been used to strike down bans on class arbitrations are now preempted. The Court's decision will provide substantial support to businesses to defeat class plaintiffs' arguments that clauses requiring arbitration to take place on an individual basis are unconscionable or violate public policy. The decision also gives businesses that have been forced into class arbitration a powerful argument that any class-wide award would be in excess of the arbitrators' powers. Moreover, the Supreme Court's decision may be the death knell for class arbitrations because the only kind of class wide arbitration that can be conducted must be expressly provided for in the agreement, something that rarely, if ever, exists in standard commercial agreements.