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class actions lawflash

June 11, 2013

Supreme Court Upholds Arbitrator's Decision Regarding Class Arbitration

Court holds that an arbitrator did not exceed his powers under the Federal Arbitration Act in finding that class procedures were authorized because the parties agreed that the arbitrator could decide the question.

On June 10, the U.S. Supreme Court issued a unanimous decision in *Oxford Health Plans LLC v. Sutter*, ruling that an arbitrator's finding that a contract allowed for class arbitration was a proper exercise of his powers under the Federal Arbitration Act (FAA) and could not be disturbed by the Court.[1] Critically, the Court found that Oxford had agreed that the arbitrator should determine whether the contract authorized class procedures, and, therefore, the Court did not address whether that question was a "question of arbitrability" that is presumptively for the court to decide or review on a de novo basis. Instead, in light of the parties' agreement that the arbitrator was vested with the authority to answer the question of class arbitration, the Court concluded that the arbitrator's decision could only be vacated "when the arbitrator strayed from his delegated task of interpreting a contract, not when he performed that task poorly."[2]

Background

Oxford Health Plans concerned a primary care physician agreement (Agreement) entered into between Oxford Health Plans, a health insurance company, and Dr. John Sutter, a pediatrician. Under the Agreement, Sutter was to provide medical care to members of Oxford's network, and Oxford was to pay Sutter for those services at certain prescribed rates. The Agreement contained the following arbitration clause:

> No civil action concerning any dispute arising under this Agreement shall be instituted before any court, and all such disputes shall be submitted to final and binding arbitration in New Jersey, pursuant to the rules of the American Arbitration Association with one arbitrator.

Several years after entering into the Agreement, Sutter sued Oxford on behalf of a proposed class of other New Jersey physicians under the same Agreement, alleging that Oxford had failed to make full and prompt payment to the physicians. After Oxford successfully moved to compel arbitration, the parties agreed that the arbitrator should decide whether the Agreement authorized class arbitration. The arbitrator ultimately found that the Agreement authorized class arbitration, prompting Oxford to move to vacate that decision in federal district court. The district court denied the motion, and the U.S. Court of Appeals for the Third Circuit affirmed. While the arbitration proceeded, the Supreme Court issued its decision in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, finding that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party **agreed** to do so."[3] Oxford asked the arbitrator to reconsider his decision on class arbitration in light of the *Stolt-Nielsen* decision, but the arbitrator ruled that *Stolt-Nielsen* had no effect on that issue because the Oxford Agreement authorized class arbitration. Oxford moved to vacate the

1. *Oxford Health Plans LLC v. Sutter*, No. 12-135 (U.S. Jun. 10, 2013), *available at* http://www.supremecourt.gov/opinions/12pdf/12-135_e1p3.pdf.

2. *Oxford Health Plans*, slip op. at 7.

3. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010).

decision, which the district court denied, and the Third Circuit affirmed.

Summary of the Court's Holding

The Supreme Court affirmed the decisions of the lower courts, finding that the arbitrator did not "exceed his powers" under section 10(a)(4) of the FAA when deciding that the Agreement allowed for class arbitration. Oxford pointed to the Court's decision in *Stolt-Nielsen* to argue that the arbitrator had exceeded his authority by imposing class arbitration where no sufficient contractual basis existed. The Court noted, however, that the arbitrator in *Stolt-Nielsen* had exceeded his authority by **inferring** an agreement to arbitrate on a classwide basis despite the parties' "unusual stipulation" that they had never reached an agreement on class arbitration. By contrast, no such stipulation was present in *Oxford Health Plans*, and the arbitrator **interpreted** the parties' agreement in concluding that the Agreement authorized class arbitration.

Given the concession that the issue of the availability of class arbitration was for the arbitrator, the Court found that the arbitrator's decision could only be disturbed if he exceeded his powers. The Court found that the arbitrator did not exceed his powers, even if he was incorrect in his interpretation of the contract. Justice Elena Kagan wrote for the unanimous Court:

> As we have held before, we hold again: "It is the arbitrator's construction [of the contract] which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." . . . The arbitrator's construction holds, however good, bad, or ugly.[4]

Justice Samuel Alito, joined by Justice Clarence Thomas, issued a concurring opinion and stated that, were the Court permitted to reach the issue, "we would have little trouble concluding that [the arbitrator] improperly inferred '[a]n implicit agreement to authorize class-action arbitration . . . from the fact of the parties' agreement to arbitrate.'"[5]

Conclusion

The critical question of whether the availability of class arbitration is a "question of arbitrability" that is presumptively for a court to decide remains unresolved by the Supreme Court's decision in *Oxford Health Plans*. As a result, parties considering moving to compel class actions to individual arbitration should be mindful of the applicable circuit court authority on that question and should be careful in deciding whether to concede that the availability of class arbitration is a question for the arbitrator. In addition, parties drafting arbitration agreements should expressly address the availability of class, collective, and representative arbitration, thereby avoiding the court or arbitrator attempting to divine the parties' intent.

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4. *Oxford Health Plans*, slip op. at 8 (quoting *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 599 (1960)).

5. *Id.* at 1 (Alito, J., concurring) (quoting *Stolt-Nielsen*, 559 U.S. at 685) (first alteration added).

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