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Class Arbitration: Arbitrator's Interpretation Subject to Limited Review

June 12, 2013

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Reflecting the limited judicial review of an arbitrator's decision, on June 10, 2013, the United States Supreme Court issued a unanimous opinion in *Oxford Health Plans LLC v. Sutter* affirming an arbitrator's interpretation of a contract to allow class action arbitration in the absence of clear language to the contrary. The opinion has broad implications for the availability of class arbitration and underscores the importance of including language in contract provisions that specifically precludes class arbitration. Without such language, the plaintiffs' bar will undoubtedly invoke the *Sutter* decision to permit class arbitration even where provisions are silent as to the availability of class procedures.

Section 10(a)(4) of the Federal Arbitration Act (FAA) limits federal court review of arbitral decisions to circumstances where the arbitrator exceeds his or her powers. *See* 9 U.S.C. § 10(a)(4). This restrictive standard of review was of central importance to the *Sutter* case.

In *Sutter*, Defendant Oxford sought to vacate an arbitrator's decision on the grounds that the arbitrator exceeded his powers under FAA § 10(a)(4). Sutter, a pediatrician, contracted with Oxford, a health insurance company, to provide medical care services to Oxford members in exchange for payment at certain rates. *Id.* at 1. Sutter sued Oxford in New Jersey state court on behalf of himself and a purported class, alleging Oxford did not make sufficient payments, in breach of the agreement. *Id.* at 1-2. Pointing to an arbitration clause in the contract providing that any "civil action concerning any dispute under this Agreement . . . shall be submitted to final and binding arbitration," Oxford moved to compel arbitration, which relief was granted. *Id.* at 2. The parties, however, agreed to allow the arbitrator to determine whether the contract allowed class arbitration; class arbitration was not expressly addressed in the contract. *Id.* The arbitrator concluded the contract allowed class arbitration because, in interpreting the relevant provision, the arbitrator found that its text evinced an intention by the parties to allow any court proceeding, including class action proceedings, to be held before the arbitrator.

The district court denied Oxford's motion to vacate the decision and the Third Circuit affirmed. *Id.* During the pendency of the arbitration, the Supreme Court decided *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010), which held, among other things, that "[a]n arbitrator may employ class procedures only if the parties have authorized them." *Id.* at 1. Oxford requested the arbitrator reconsider his opinion in light of *Stolt-Nielsen*, but the arbitrator reached the same conclusion. *Id.* at 3. The district and appellate courts again affirmed, and the Supreme Court agreed to hear the case in order to resolve a split of authority among the United States Courts of Appeals.

In the opinion authored by Justice Kagan, the Court stated that the scope of its review is extremely limited where a party challenges an arbitral decision on the ground that the arbitrator exceeded his powers under the FAA. Accordingly, the Court held that the arbitrator's interpretation of the parties' contract was within the scope of the arbitrator's powers and affirmed the judgment of the Court of Appeals. *Id.* at 5. The Court stressed that whether the arbitrator's interpretation of the parties' contract was correct made no difference, and the Court even suggested that the arbitrator's interpretation of the parties' intent may have been wrong. *Id.* at 3-9 ("Nothing we say in this opinion should be taken to reflect any agreement with the arbitrator's contract interpretation, or any quarrel with Oxford's contrary reading."). Rather, the Court emphasized that the only relevant inquiry under § 10(a)(4) "is not whether the arbitrator construed the parties' contract correctly, but whether he construed it at all." *Id.* at 9.

The Court's discussion of the *Stolt-Nielsen* decision is particularly instructive for practitioners facing potential class action claims. Oxford argued that under *Stolt-Nielsen* an arbitration decision may be set aside where it "imposes class arbitration without a *sufficient* contractual basis." *Id.* at 6 (quoting Reply Brief at 5) (emphasis added). The Court disagreed, explaining that the arbitral decision in *Stolt-Nielsen* was vacated because the arbitrator lacked "any" contractual basis for requiring class procedures on account of the "unusual" stipulation between the parties in that case, which conceded that they had never contemplated class arbitration. *Id.* The arbitrator's decision therefore could not have been based on an analysis of the parties' intent since they stipulated to having no intent at all. Accordingly, the arbitrator's decision in *Stolt-Nielsen* improperly asserted a policy choice, which was easily distinguishable from the facts of *Sutter*, where no stipulation existed and the arbitrator's analysis turned on a permissible interpretation of the parties' intended meaning of the contractual language. *Id.* at 7.

The holding reflects the extremely limited review of arbitration decisions afforded to federal courts, which may only be overturned "if the arbitrator acts outside the scope of his contractually delegated authority – issuing an award that simply reflects his own notions of economic justice rather than drawing its essence from the contract." *Id.* at 5 (internal quotation marks and brackets omitted). Parties who agree to arbitration simply must be willing to accept the arbitrator's contractual interpretation.

The Court's opinion in *Sutter* sends a clear message to prospective class action defendants: to avoid class arbitration, contract provisions should explicitly prohibit class arbitration.[1] Any uncertainty as to the availability of class arbitration will be left to the discretion of the arbitrator, whose analysis is unlikely to be disturbed by a court. As a result of the *Sutter* decision, practitioners would be best-served to amend existing arbitration provisions to prohibit class arbitration and implement the same proscriptions in future agreements.

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[1] Practitioners must take care to consider the law in their jurisdiction to ensure the enforceability of such provisions.