SUTHERLAND

LEGAL ALERT

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Supreme Court Upholds Arbitrator's Authority to Interpret Agreement to Permit Class Proceedings

"The arbitrator's construction holds, however good, bad, or ugly." This was the succinct message delivered on June 10, 2013, by a unanimous U.S. Supreme Court in *Oxford Health Plans LLC v. Sutter*, No. 12-135, which challenged an arbitrator's determination that an agreement between two private parties permitted class arbitration. Although the Court expressed doubt about whether the arbitrator's decision was correct, the justices agreed that "the courts have no business overruling him because their interpretation of the contract is different from his." (A copy of the opinion is available here.)

In *Sutter*, Petitioner Oxford Health Plans LLC entered into an employment agreement with Respondent, Dr. Sutter, that contained an arbitration provision stating: "[n]o civil action concerning any dispute arising under this Agreement shall be instituted before any court, and all such disputes shall be subject to final and binding arbitration." When Sutter filed a putative class action, Oxford successfully moved to compel arbitration, relying on the agreement's arbitration provision. The parties disputed whether the agreement permitted class arbitration. The issue was submitted to the arbitrator for resolution. The arbitrator concluded, among other things, that the broad language in the agreement authorized class arbitration because the language "any civil action" includes class actions. Oxford challenged the decision in court, but both the district court and the Third Circuit deferred to the arbitrator's interpretation. The Third Circuit stated: "We are satisfied that the arbitrator endeavored to interpret the parties' agreement within the bounds of the law, and we cannot say that his interpretation was totally irrational." *Sutter v. Oxford Health Plans LLC*, 675 F.3d 215, 225 (3d Cir. 2012).

The Supreme Court's unanimous decision reconfirms the scope of an arbitrator's discretion to interpret contract issues properly subject to arbitration. The Court noted that § 10(a)(4) of the Federal Arbitration Act (FAA) provides for only very limited judicial review, and that a court may reverse only where an arbitrator has exceeded the scope of his or her authority. The "sole question for review," according to the Court, was "whether the arbitrator interpreted the parties' contract, not whether he construed it correctly." Under this standard, "it is not enough . . . to show that the [arbitrator] committed an error—or even a serious error," and an arbitral decision construing a contract "must stand, regardless of a court's view of its (de)merits."

The Court found inapplicable its recent decision in *Stolt-Nielsen v. AnimalFeeds International Corp.*, 130 S. Ct. 1758, 1776 (2010), on which Oxford relied heavily. In *Stolt-Nielsen*, the Court held "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." In *Stolt-Nielsen*, however, the parties entered into a stipulation that they had never reached agreement on class arbitration and, therefore, there was no contractual basis for imposing class arbitration on the defendant. By contrast, in *Sutter*, the parties submitted the contract to the arbitrator on the issue of whether class arbitration was permitted, thereby vesting the arbitrator with authority to interpret the contract and determine whether there was a contractual basis for class arbitration.

Despite affirming the decision, the Court took care to distance itself from the contract interpretation issue. "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. All we say is that convincing a court of an

arbitrator's error—even his grave error—is not enough." The Court also noted that "[w]e would face a different issue if Oxford had argued below that the availability of class arbitration is a so-called 'question of arbitrability.'"

Overall, the decision highlights principally the high standard for judicial review of questions submitted to an arbitrator for decision, and therefore may have limited implications for class action issues more generally. Certainly, however, the case underscores that any party who wishes to avoid class arbitration should *expressly* preclude class arbitration in its agreements. The decision also may prompt some parties to exclude specifically from a delegation of arbitrability provision any issues having to do with the availability of class certification.

Sutter is the latest in a number of class action cases before the Supreme Court this term. The Court is expected to issue another significant arbitration decision before the end of the term, *American Express Co. v. Italian Colors Restaurant*, 12-133 (*Amex*) (click here for the Sutherland Legal Alert on the *Amex* oral argument). Already this term, the Court has decided a jurisdictional issue in *Standard Fire Insurance Co. v. Knowles*, No. 11-1450, holding that a damages stipulation by the named plaintiff cannot bind the class and defeat jurisdiction under the Class Action Fairness Act. (Click here for a copy of the Sutherland Legal Alert on *Knowles*.) The Court also held that a district court may not certify a class action without first resolving whether the plaintiff class has introduced adequate evidence to show that the case is susceptible to an award of classwide damages. *Comcast Corp. v. Behrend*, No. 11-864 (click here for the Sutherland Legal Alert). Other class action decisions this term have addressed offers of judgment (click here for the Sutherland Legal Alert on *Genesis HealthCare Corp. v. Symczyk*) and materiality in securities fraud cases (click here for the Sutherland Legal Alert on *Amgen, Inc. v. Connecticut Retirement Plans and Trust Funds*).

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