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LEGAL ALERT

Legal Alert: Supreme Court Holds that Parties Who Have not Agreed to Class Arbitration Cannot be Required to Submit to Class Arbitration

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On April 27, the United States Supreme Court published its decision in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, No. 08-1198, an antitrust case that could have far-reaching implications with respect to class arbitration. (A copy of the Court's slip opinion is available here.) In a 5–3 decision, the Court held that parties who had never agreed on the issue of whether to allow class arbitration under the arbitration agreement between them – and whose arbitration agreement made no mention whatsoever of class arbitration – could not be required to submit to class arbitration under the agreement. In so holding, the Court ruled that "a party may not be compelled under the [Federal Arbitration Act] to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so."

Background

The facts that ultimately led the parties in *Stolt-Nielsen* to the Supreme Court are long and complicated, but the key points are as follows:

• The case stemmed from an antitrust class action that AnimalFeeds brought against Stolt-Nielsen and other shipping companies for price-fixing;

• The United States Court of Appeals for the Second Circuit ruled that the antitrust claims were subject to an arbitration agreement the parties had entered into;

• The parties stipulated that the arbitration agreement was silent on the issue of class arbitration and that the parties had never reached an agreement on the same, and they agreed to submit the question of whether they could pursue a class arbitration under the agreement to a panel of arbitrators;

• The arbitration panel unanimously concluded that the agreement allowed class arbitration but failed to ground their conclusion on established principles of New York or maritime law;

• On petition from Stolt-Nielsen, the United States District Court for the Southern District of New York ruled that the arbitration panel had exceeded its powers and set aside the decision to allow class arbitration; and

• The United States Court of Appeals for the Second Circuit reversed the

district court's decision and held that the parties could proceed with the class arbitration, finding that there existed no maritime or New York law that precluded the parties from engaging in class arbitration.

The Supreme Court's Decision

While the underlying legal analysis set forth by the Court is complex, the overarching principles on which the Court ultimately rested its decision are simple:

• The primary purpose of the Federal Arbitration Act is to ensure that private agreements to arbitrate are enforced according to their terms;

• Arbitrators derive their powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution;

• Parties have the freedom to structure their agreements to limit the issues that must be arbitrated, to agree on rules governing the arbitration proceeding, to choose who will resolve particular disputes, and to specify with whom they choose to arbitrate their disputes; and

• A party who agrees through an arbitration agreement to engage in classic, bilateral arbitration – arbitration between two parties – likely does so with the intent to increase efficiency and reduce costs and administrative burdens, and class arbitration precludes such a party from effectuating that intent due to the fact that class arbitration more closely resembles complex litigation than bilateral arbitration.

On the basis of these guiding principles, the Court held that the decision of the arbitration panel – which ruled that the arbitration agreement allowed the parties to engage in class arbitration notwithstanding both parties' express statements that they had reached no agreement on the issue – was "fundamentally at war with the foundational . . . principle that arbitration is a matter of consent." Accordingly, the Court held that Stolt-Nielsen could not be required to submit to class arbitration under the terms of the arbitration agreement.

Implications of the Court's Decision

While the actual implications of the Court's decision in *Stolt-Nielsen* are unknown at this time, the potential impact of the decision is widespread and immediate. First and foremost, the decision appears to have created a way in which employers can possibly preclude class actions by their employees entirely – by requiring employees to submit all disputes to binding arbitration and by including a provision in the arbitration agreement that disallows class arbitration (commonly referred to as a "class action waiver"). There is currently a split in authority across the country as to whether class action waivers are enforceable. However, on the basis of the Court's ruling that parties cannot be forced into class arbitration unless they expressly agree to do so, it is arguable that the decision implicitly overrules state court decisions that have struck down class waivers as unenforceable. If the intent and consent of the parties will truly be the turning factor in deciding whether parties must submit to class arbitration, then the logical conclusion is that the parties also must be allowed to consent to an express preclusion of class arbitration.

Employers' Bottom Line

All employers – those that are currently using arbitration agreements, those that are considering whether to use arbitration agreements, and even those that have never addressed the possibility of mandatory arbitration – should review their options with respect to arbitration with their labor and employment counsel in order to ensure that they are best-positioning themselves for the future with regard to potential employment disputes. Additionally, as the landscape of the law is ever-changing, employers that currently use mandatory arbitration agreements that are silent on the issue of class arbitration – such as the agreement at issue in *Stolt-Nielsen* – should not rely on the Court's decision in order to avoid class actions by their employees but should strongly consider the inclusion of express class action waivers (subject to applicable state law) to ensure such a result.

Ford & Harrison will continue to provide information and guidance on the various issues that arise as a result of the Court's decision in *Stolt-Nielsen*. If you have any questions regarding the case or the issues addressed in this Legal Alert please contact the authors, Jeff Mokotoff, jmokotoff@fordharrison.com, Lucas Asper, lasper@fordharrison.com, or the Ford & Harrison attorney with whom you usually work.