Concepción Martinez & Bellido
ATTORNEYS AT LAW

Stolt-Nielsen S.A. v Animalfeeds International Corp.: Important Supreme Court Ruling Concerning Class Action Arbitrations and the Scope of Judicial Review in the Context of Domestic and International Arbitrations

By Carlos F. Concepción and Scott A. Burr*

In a recent ground-breaking case, *Stolt-Nielsen S.A. v. Animalfeeds International Corp.*, No. 08-1198, [1] the United States Supreme Court considered the question "whether imposing class arbitration on parties whose arbitration clauses are 'silent' on that issue is consistent with the Federal Arbitration Act." The Court held that the arbitrators had exceeded their authority in permitting class arbitration. As a consequence, the Court took the unusual step of vacating the arbitration award. The Court further held that class arbitration was permitted under these facts and reversed the result. *Stolt-Nielsen* is a significant decision for corporations who rely on arbitration agreements in standard form contracts and who prefer to avoid class-action arbitrations. The case also breaks new ground on the issue of when and on what grounds courts in the U.S. may vacate arbitration awards and revisits the Court's landmark ruling in *Green Tree Financial Corp. v. Bazzle*.[2]

The Holding

In *Stolt-Nielsen, S.A.*, Petitioners (collectively referred to as "Stolt-Nielsen") were shipping companies in the business of chartering compartments in vessels for the shipment of liquids. Respondent AnimalFeeds International Corp. ("AnimalFeeds") was a supplier of ingredients such as fish oil to animal feed producers around the world. The parties entered into a contract that contained an arbitration clause calling for arbitration of disputes in New York. After a Department of Justice criminal investigation revealed petitioners were engaged in illegal price-fixing, AnimalFeeds brought a putative class action lawsuit against petitioners asserting antitrust claims. Following a decision by the U.S. Court of Appeals for the Second Circuit that the claims were subject to arbitration, AnimalFeeds demanded class action arbitration. The parties entered into a supplemental agreement that the question of class arbitration would be decided by a panel of three arbitrators under the American Arbitration Association's Supplementary Rules for Class Arbitrations. The parties stipulated that the arbitration clause was "silent" with respect to class arbitration, *i.e.*, that no agreement had been reached on that issue.

---

* Carlos F. Concepción is founder of Concepción Martinez & Bellido (CMB), a complex litigation boutique law firm located in Miami, Florida. Mr. Concepcion heads up the firm's dispute resolution practice group. He serves as an arbitrator with the International Chamber of Commerce (ICC), and the International Center for Dispute Resolution (ICDR) of the American Arbitration Association. He is also a Panel Member of the International Institute for Conflict Prevention and Resolution (CPR).

Scott A. Burr is a member of the dispute resolution practice group at Concepción, Martinez, & Bellido and has represented clients in arbitrations in numerous venues applying various institutional rules, including ICDR, ICC, ICSID and IACAC. He holds a Masters' of Law degree in International and Comparative Law from the Georgetown University Law Center and is certified by the Florida Bar as an expert in International Law.

[1] *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. ___, 2010 WL 1655826, at *4 (2010).

[2] 539 U.S. 444 (2003)

The arbitration panel concluded that because the arbitration clause did not preclude class arbitration, it was permitted. Stolt-Nielsen subsequently petitioned the district court to vacate the clause construction award, which it did; the district court held that the arbitration panel acted in "manifest disregard" of the law. On appeal, the Second Circuit reversed, holding the "manifest disregard of the law" doctrine survived the Supreme Court's opinion in *Hall Street*, and the arbitrators did not act in manifest disregard of the law. The Supreme Court granted *certiorari*.

In a five to three decision (Justice Sotomayor did not participate), the Supreme Court held that the award authorizing class arbitration should be vacated because the arbitration panel had merely imposed its own "policy choice," rather than identifying and applying "a rule of decision derived from the FAA or either maritime or New York Law," which the parties had contended governed their dispute. Writing for the Court, Justice Alito stated the panel exceeded its powers, warranting vacatur under §10 (a) (4) of the FAA. Instead of directing a rehearing by the arbitrators, however, as it could done under S10 (b) of the FAA the court proceeded to decide the question that had been presented to the panel, namely, whether class arbitration was permissible. The court chose to decide the issue because it concluded that "there can be only one possible outcome."

After a survey of its precedents, 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." The mere fact that an arbitration clause is silent is not sufficient to authorize class arbitration, according to the Court; rather, there must be a showing that the parties affirmatively consented to the use of class procedures. The requisite consent cannot be inferred, the Court stated, "solely from the fact of the parties' agreement to arbitrate" because class-arbitration "changes the nature of arbitration to such a degree that it cannot be presumed the parties consented to it by simply agreeing to submit their disputes to an arbitrator." The Court concluded "the differences between bilateral and class-action arbitration are too great for arbitrators to presume…that the parties' mere silence on the issue of class-action arbitration constitutes consent to resolve their disputes in class proceedings."

In dissent, Justice Ginsburg, joined by Justices Stevens and Breyer, concluded that the decision of the Second Circuit upholding the arbitration panel should be allowed to stand because the issue before the Court was not ripe for judicial review of an arbitrator's decision as preliminary as the 'partial award' made in this case." She further contended that even if the issue was ripe, the Court should find that the arbitrators had not exceeded their authority since the parties' supplemental agreement expressly referred the class-arbitration issue to the panel. The panel thus was empowered by the parties to render their decision.

Implications and Limitations of Stolt-Nielsen

The decision raises a number of important issues concerning the future of class arbitration and court review of arbitral awards in United States courts.

First, the majority opinion raises questions as to the level of deference that will be shown by United Sates courts in the future toward arbitral decisions involving class arbitration. In particular, the majority decision appears to remove class procedures from the sphere of deference traditionally afforded to matters of arbitral procedure. To understand why this is the case, it is necessary to consider how the majority characterized an earlier decision regarding class arbitration in *Green Tree Financial Corp. v. Bazzle*,[3] There, a plurality of the Court deemed the question of whether the parties' agreement authorizes

[3] *Id.*

Concepción, Martinez & Bellido • 255 Aragon Ave • 2nd Floor • Coral Gables, Florida • 33134
tel: 305.444.6669 • fax: 305.444.3665 • www.cfclaw.com

class arbitration to be one of a procedural nature for the arbitral tribunal to resolve.[4] In *Stolt-Nielsen*, the majority took great pains to emphasize that the plurality opinion in *Bazzle* neither settled "for the Court" the question of "who should decide" whether class action is authorized under a contract, nor provided the standard for resolving the underlying issue.[5] Ultimately, the Court declined to resolve this question because the parties to the litigation had entered into a form of submission agreement referring the question to the arbitral tribunal, a decision the Court left undisturbed.

However, in ruling that class procedures cannot be authorized in contracts based solely upon the existence of an agreement to arbitrate, the Court placed a significant substantive limitation upon the discretion that would ordinarily be enjoyed by any arbitral tribunal deciding what the *Bazzle* plurality considered to be a matter of "arbitration procedure" (once again, an open question remains as to whether an arbitral tribunal or court should decide whether an agreement is "silent" as to the availability of class procedures). In this sense, the Court has limited *Bazzle*, deeming class procedures to be ontologically different, and thereby requiring any arbitral tribunal visiting the question to respect additional safeguards, *i.e*. performing a contractual analysis in search of affirmative intent, before procedural deference will attach. While the Court declined to say what exact principles would justify a finding of consent,[6] any arbitral tribunal deciding a petition for class certification will have to take particular care to justify its analysis in terms recognized under ordinary contract law principles.

Second, the decision is interesting in relation to what it says (and does not say) about the standard of review that is to be applied in adjudicating a motion for vacatur (setting aside) under the FAA. In particular, the Court referred to but did no decide the status of "manifest disregard", see *Wilko v. Swan*, 346 U.S. 427, 436-37 (1953) ("[T}he interpretations of the law by the arbitrators in contrast to manifest disregard are not subject, in the federal courts, to judicial review for error in interpretation"), after *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 585 (2008) (which held that the grounds enumerated under the FAA for vacatur are exclusive, but did not decide the status of "manifest disregard"). The Court declined to decide whether "manifest disregard" "survives . . . as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10".[7]

Because Section 10 of the FAA governs vacatur of awards under the New York Convention, a resolution of the existing split of authority in the United States courts as to the status of "manifest disregard" would have been welcome. While declining to decide the status of "manifest disregard," the Court in *Stolt-Nielsen* did observe that if the standard meant "kn[owing] of the relevant [legal] principle, appreciat[ing] that this principle controlled the outcome of the disputed issue, and nonetheless willfully flout[ing] the governing law by refusing to apply it", as advocated by the party seeking to uphold the class certification, that standard was satisfied on the facts presented.[8] In short, the Court found that the arbitral tribunal, faced with a situation in which the parties had stipulated that no agreement existed between them

---

[4] *Id*. at 452-53.

[5] *Stolt-Nielsen* at 15-16.

[6] *Stolt-Nielsen* at 23, n. 10.

[7] *Stolt-Nielsen* at 7, n.3.

[8] *Stolt-Nielsen* at 7 n.4.

Concepción, Martinez & Bellido • 255 Aragon Ave • 2nd Floor • Coral Gables, Florida • 33134
tel: 305.444.6669 • fax: 305.444.3665 • www.cfclaw.com

on class arbitration, had committed an error sufficient to vacate under Section 10(a)(4) of the FAA (based upon the Court's finding that the arbitrators "exceeded their powers"), because the arbitral tribunal failed to perform a choice of law analysis to identify and apply a contractual rule of decision for resolving the issue. Instead, in the view of the Court's majority, "what the arbitration panel did was simply to impose its own view of sound policy regarding class arbitration."[9] This, the Court found, was inconsistent with a substantive requirement under the FAA that arbitration must be based upon consent, and that a decision to refer a dispute to class procedures could not be inferred in the absence of some contractual basis for finding such consent.

Third, the decision forces companies to consider about how best to protect themselves from class arbitration, if this is their preference. One answer would be the attempt to amend existing agreements or to ensure that future agreements make clear that the parties do not wish to be subject to class procedures. Whether such provisions will be upheld, however, is another open question in the United States courts, particularly in connection with adhesion contracts not negotiated by "sophisticated parties" (indeed, Justice Ginsburg argues in her dissent that the majority's rationale would not appear to apply to such contracts). Several United States jurisdictions have refused to enforce "waiver" provisions on a number of different policy grounds; some have even deemed such provisions not to be severable, thereby rendering the arbitration clauses in which such "waiver" are contained unenforceable (potentially leaving the party who manages to negotiate "waivers" of class arbitration faced with pyrrhic victory). Given the complex federal nature of the American judicial system, analyzing a party's best options for managing these choices and risks is no easy matter. At a minimum, however, it is safe to say that parties seeking to minimize exposure to the risk of class arbitration should avoid agreeing to arbitrate under rules allowing for such procedures or in jurisdiction the laws of which have been construed to prohibit the enforcement of "waivers" of class arbitration.

[9] *Id*. at 7.

Concepción, Martinez & Bellido • 255 Aragon Ave • 2nd Floor • Coral Gables, Florida • 33134
tel: 305.444.6669 • fax: 305.444.3665 • www.cfclaw.com