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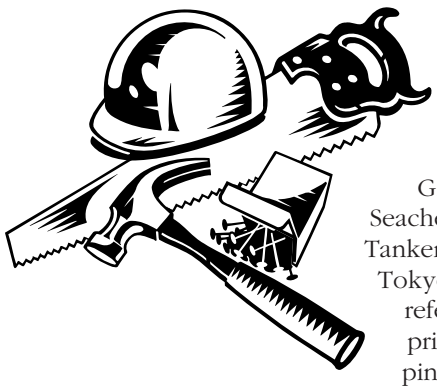
The Sounds of Silence: Reflections on the Supreme Court's *Stolt-Nielsen* Decision

The U.S. Supreme Court recently resolved a split among the circuit courts on class arbitrations with the Court's ruling in *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*[1] The issue brought on appeal was whether imposing class arbitration on parties whose arbitration clauses are silent on that issue is consistent with the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq. The Court held that imposing class action arbitration on parties whose arbitration clauses are silent on the issue is inconsistent with the FAA.[2]

The circuit split on class arbitration resulted from the U.S. Supreme Court's decision in *Green Tree Financial Corp. v. Bazzle*.[3] The *Bazzle* decision concerned contracts between a commercial lender and its customers that had an arbitration clause that did not expressly mention class action arbitration. The *Bazzle* opinion, authored by Justice Stevens, did not establish a rule that an arbitrator should decide whether class arbitration is permitted because only a plurality of the court agreed. Only a plurality decided that the arbitrator should determine whether the contracts were "silent" on the issue of class action arbitration; therefore, the *Bazzle* Court did not answer the question presented in *Stolt-Nielsen S.A. v. AnimalFeeds*—whether imposing class arbitration on parties whose arbitration clauses are "silent" on that issue is consistent with the FAA.



The dispute in *Stolt-Nielsen S.A. v. AnimalFeeds* centered on a suit against the petitioners, Stolt-Nielsen S.A., Stolt-Nielsen Transportation Group Ltd., Odjfell A.S.A., Odjfell Seachem A.S., Odjfell USA Inc., Jo Tankers B.V., Jo Tankers Inc., and Tokyo Marine Ltd. (collectively referred to as Stolt-Nielsen), for price fixing. Stolt-Nielsen is a shipping company that serves much of the world market for parcel tankers—"seagoing vessels with compartments that are separately chartered to customers who wish to ship liquids in small quantities."[4] The respondent, AnimalFeeds International Corp., entered into a standard contract with Stolt-Nielsen, known in the maritime trade as a charter party. The charter party that AnimalFeeds used in its transaction with Stolt-Nielsen contained an arbitration clause that was "silent" as to the availability of class action arbitration.

AnimalFeeds brought a class action antitrust suit against Stolt-Nielsen for price fixing and sought arbitration on behalf of a class of purchasers of parcel tanker transportation services. AnimalFeeds asserted that the decision to proceed with a class action arbitration should be left to the arbitrator. In addition, AnimalFeeds contended that sophisticated business entities like Stolt-Nielsen could easily have inserted an express prohibition against class arbitration.[5] Stolt-Nielsen argued that, because the arbitration clause was "silent" as to class action proceedings, the contract should be construed against arbitration; otherwise it would be contrary to the parties' intent. Stolt-Nielsen also asserted that the primary purpose of the FAA is to ensure that private arbitration agreements are enforced strictly according to their specific terms.[6]

The parties submitted the question of whether their arbitration agreement allowed for class arbitration to a panel of arbitrators and stipulated that their arbitration clause was "silent" on the class arbitration issue. Pursuant to its understanding of the Supreme Court's ruling in *Bazzle* and the public policies favoring arbitration, the three-member panel of arbitrators unanimously determined that the arbitration clause allowed for class arbitration. The panel reasoned that "arbitrators ruling after *Bazzle* had construed a wide variety of clauses in a wide variety of settings as allowing for class arbitration," and the evidence that was presented did not show an "inten[t] to preclude class arbitration."[7]

The District Court for the Southern District of New York vacated the arbitration award, finding that the arbitrators had exceeded their powers.[8] The district court found that the arbitrators had failed to conduct a choice-of-law analysis, which would have applied federal maritime law. The U.S. Court of Appeals for the Second Circuit reversed the district court, holding that the arbitrators' decision had not been in manifest disregard of maritime law or New York law. Thereafter, Stolt-Nielsen petitioned for certiorari to the U.S. Supreme Court.

The Supreme Court ultimately reversed the Second Circuit's decision. Justice Alito wrote the majority opinion, joined by Justices Roberts, Thomas,

Kennedy, and Scalia, and held that an agreement that is silent on the issue of class arbitration is not sufficient evidence that the parties had intended to submit to class arbitration, and 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 had *agreed* to do so. Justice Ginsburg authored the dissenting opinion, joined by Justices Stevens and Breyer; Justice Sotomayor took no part in the consideration or decision of the case.

The Supreme Court found that the arbitration panel impermissibly imposed their own policy considerations[9] and did not have the authority "to develop what it viewed as the best rule to be applied" when the arbitration provision was "silent" on the issue of class arbitration.[10] The Court found that the FAA applied; therefore, a party could not be compelled to submit to class arbitration absent a contractual basis for concluding that the party had *agreed* to do so. The Court explained that class arbitration "changes the nature of arbitration to such a degree that it cannot be presumed the parties consented to it simply by agreeing to submit their disputes to an arbitrator."[11] The parties stipulated that the arbitration clause was silent on that issue; therefore, they did not agree to submit to class arbitration and could not be compelled to do so.

In her dissent, Justice Ginsburg asserted that the federal courts' general adherence to the final judgment rule was not satisfied in this case because the decision to permit class arbitration was "highly interlocutory and, therefore, not ripe."[12] Moreover, she disagreed with the Court's depiction of the panel's holding as policy-driven, illustrating that the panel had considered New York law and maritime law when interpreting the contract. She stated that, even if the issue was ripe, the parties had indeed stipulated to the absence of any agreement on class arbitration. Instead, Justice Ginsburg proposed that, according to the record, the parties had merely stipulated that the contract contained no agreement to prohibit class arbitrations. Lastly, Justice Ginsburg addressed potential incongruities created by the Court's approach. She stated that, even though class actions are available in courts, parties who select arbitration can risk losing their ability to bring claims as a class.

The *Stolt-Nielsen* decision is likely to have considerable repercussions in the field of employment law. The essence of the Court's ruling is that "[a]n implicit agreement to authorize class-action arbitration […] is not a term that the arbitrator may infer solely from the fact of the parties' agreement to arbitrate."[13] In practice, the Supreme Court's decision in *Stolt-Nielsen* conveys that, in order for class arbitration to be available, the contract must include an express statement to that effect. How lower courts will apply this rule in other contexts is likely to be the subject of future litigation. Even if an arbitration agreement expressly allows for class action arbitration, other procedural issues will arise—for example, issues concerning whether class members are bound by the arbitrator's decision if they never received notice or issues concerning suitable remedies when different employees have signed multiple versions of a class action arbitration agreement. These potential procedural concerns suggest that both employees and employers must take great care when drafting, executing, and contracting arbitration agreements. **TFL**

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Endnotes

[1]*Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, ___ U.S. ___, 130 S. Ct. 1758 (2010).

[2]*Id.* at 1775.

[3]539 U.S. 444 (2003).

[4]*Stolt-Nielsen*, 130 S. Ct. at 1758.

[5]Stolt-Nielsen, No. 08-1198, Respondent's Brief in Opposition at 4.

[6]Stolt-Nielsen, No. 08-1198, Petition for Writ of Certiorari at 4.

[7]*Stolt-Nielsen*, 130 S. Ct. at 1766.

[8]*Id. See also* 9 U.S.C. § 10(a)(4) (2010) (authorizing a district court to vacate an arbitrators' ruling when the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made).

[9]*Stolt-Nielsen*, 130 S. Ct. at 1770.

[10]*Id.* at 1769.

[11]*Id.* at 1775.

[12]*Id.* at 1778.

[13]*Id.* at 1775.

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