

# Briefing

Labor and Employment Practice

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## Supreme Court Holds “Class Arbitration” May Not Be Imposed Absent Explicit Agreement

Class actions tend to increase the breadth and potential exposure of litigation against corporate defendants, which creates uncertainty in the legal environment. In *Stolt-Nielsen SA v. AnimalFeeds Int’l Corp.*, the United States Supreme Court eliminated some of this uncertainty by holding that the Federal Arbitration Act (“FAA”) does not permit the imposition of “class arbitration” on parties who have not explicitly agreed to authorize class arbitration. U.S., No. 08-1198, 4/27/10.

In a 5-3 ruling written by Justice Alito, the Supreme Court held that arbitrators asked to interpret an arbitration agreement that is silent on the issue of class action arbitration cannot rule on the basis of their policy interpretation that class action arbitration is permitted. In other words, arbitrators may not infer an implicit agreement to authorize class action arbitration solely from the fact that the parties have entered into an agreement to arbitrate disputes. Accordingly, the Court held that the arbitration panel’s decision to order class action arbitration exceeded the scope of the panel’s authority under Federal Arbitration Act Section 10(a)(4).

The plaintiff in *Stolt-Nielsen* filed a class action lawsuit against four major parcel tanker transportation companies, including Stolt-Nielsen, alleging price-fixing violations. All parties stipulated that the maritime charter agreement at issue contained “no agreement” concerning class arbitration. Rather, by supplemental agreement, the parties “expressly assigned” to the arbitrators the issue whether the charter agreement permitted class arbitration. The arbitration panel held that the agreement allowed class arbitration, but the district court disagreed and refused to enforce the arbitrators’ award. The Second Circuit reversed, holding that construing the arbitration clause to permit class arbitration “did not manifestly disregard the law” because the parties specifically agreed that the arbitration panel would decide the scope of the clause.

The Supreme Court reversed the Second Circuit’s decision. In so doing, the Court recognized that class arbitration changes the nature of arbitration to such a substantial degree that businesses and employers cannot be presumed to have agreed to class arbitration simply by agreeing to submit disputes to an arbitrator. While *Stolt-Nielsen* involved two sophisticated business parties, the Court’s reasoning would appear to apply to employer-employee arbitration provisions as well. Finally, the Court’s decision also considered the FAA’s judicial review provision, and concluded that Section 10(a)(4) prevents an arbitrator from deciding a contract interpretation issue based on public policy, rather than a rule of law.

If you have questions concerning the Court’s decision or the scope or application of a particular arbitration agreement, please contact one of the Labor & Employment Relations Practice Group partners listed below.

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