

ALERTS**Labor & Employment Law Alert - Unanimous Supreme Court Upholds Arbitrator's Decision To Allow Class Arbitration**

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The U.S. Supreme Court unanimously affirmed an arbitrator's decision to allow class arbitration. The Court's June 10, 2013 opinion, authored by Justice Elena Kagan, holds that the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (FAA) bars the Court from substituting its interpretation of the contract for the arbitrator's interpretation.

In Oxford Health Plans LLC v. Sutter, the question arose over a contract between pediatrician John Sutter and Oxford Health Plans to provide medical care to members of Oxford's network. Sutter filed suit against Oxford in New Jersey Superior Court on his own behalf and on behalf of a proposed class of other New Jersey physicians under contract with Oxford, claiming that Oxford had failed to properly pay them under the contract. Oxford moved to compel arbitration of Sutter's claims and the state court agreed. The parties agreed to allow the arbitrator to determine whether their contract authorized class arbitration and the arbitrator decided class arbitration was appropriate.

Oxford appealed to the federal court to vacate the arbitrator's decision on the grounds that he had exceeded his powers under the FAA. Both the U.S. District Court and the Court of Appeals for the Third Circuit refused to overturn the arbitrator's decision. In the Opinion issued earlier this week, the Supreme Court unanimously agreed with the lower courts, noting that the "sole question" was "whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." The Supreme Court's decision found that the arbitrator had interpreted the contract and, therefore, his decision was upheld. Justice Kagan's opinion emphasized that Oxford had agreed to allow the arbitrator to determine whether the contract authorized class arbitration. This barred Oxford from later arguing that the Court, rather than the arbitrator, should determine whether the issue was arbitrable.

The Supreme Court also distinguished its 2010 decision in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010), because the parties in that case had stipulated that they had not reached an agreement on class arbitration. Because the stipulation made clear that the arbitrator in *Stolt-Nielsen* did not have a contractual basis for ordering class arbitration, the arbitrator's decision in that case was overturned. By contrast, whether the Oxford Health permitted class arbitration was an open question.

Oxford Health, when taken with *Stolt-Nielsen*, provides employers with a road map for creating arbitration agreements that either allow or bar class arbitration. Employers with arbitration agreements should review them in light of these decisions to ensure that they have their intended effect.

RELATED PEOPLE**Kenneth J. Yerkes**

Partner
Indianapolis

P 317-231-7513
F 317-231-7433
ken.yerkes@btlaw.com

**John T.L. Koenig**

Partner
Atlanta

P 404-264-4018
F 404-264-4033
john.koenig@btlaw.com

**Norma W. Zeitler**

Partner
Chicago

P 312-214-8312
F 312-759-5646
norma.zeitler@btlaw.com

**William A. Nolan**

Partner
Columbus

P 614-628-1401
F 614-628-1433
bill.nolan@btlaw.com

For more information, please contact the Barnes & Thornburg Labor and Employment attorney with whom you work, or a leader of the firm's Labor and Employment Department in the following offices:

Kenneth J. Yerkes, Chair (317) 231-7513; John T.L. Koenig, Atlanta (404) 264-4018; Norma W. Zeitler, Chicago (312) 214-8312; William A. Nolan, Columbus (614) 628-1401; Eric H.J. Stahlhut, Elkhart (574) 296-2524; Mark S. Kittaka, Fort Wayne (260) 425-4616; Michael A. Snapper, Grand Rapids (616) 742-3947; Peter A. Morse, Indianapolis (317) 231-7794; Scott J. Witlin, Los Angeles (310) 284-3777; Tina Syring Petrocchi, Minneapolis (612) 367-8705; Janilyn Brouwer Daub, South Bend (574) 237-1139; Teresa L. Jakubowski, Washington, D.C. (202) 371-6366.

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Mark S. Kittaka

Partner

Fort Wayne, Columbus

P 260-425-4616

F 260-424-8316

mark.kittaka@btlaw.com



Michael A. Snapper

Of Counsel (Retired)

P 616-742-3947

mike.snapper@btlaw.com



Peter A. Morse, Jr.

Partner

Indianapolis, Washington, D.C.

P 317-231-7794

F 317-231-7433

pete.morse@btlaw.com



Scott J. Witlin

Partner

Los Angeles

P 310-284-3777

F 310-284-3894

scott.witlin@btlaw.com



Janilyn Brouwer Daub

Partner

South Bend, Elkhart

P 574-237-1139

F 574-237-1125

janilyn.daub@btlaw.com



Teresa L. Jakubowski

Partner

Washington, D.C.

P 202-371-6366

F 202-289-1330

teresa.jakubowski@btlaw.com

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