Supreme Court: No Arbitration Class Actions Where Arbitration Agreement Is Silent on Issue

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On April 27, 2010, the Supreme Court decided *Stolt-Nielsen S.A., et al. v. AnimalFeeds International Corp.* (No. 08-1198), which addressed the primary issue of "whether imposing class arbitration on parties whose arbitration clauses are 'silent' on that issue is consistent with the Federal Arbitration Act (FAA)." In a victory both for parties seeking to enforce arbitration provisions in consumer contracts, and for those that have incorporated such provisions to restrict the use of class action procedures to judicial forums, the Court decided that imposing class arbitration on parties who have not expressly agreed to authorize class arbitration is inconsistent with the FAA. The Court ruled that the subject arbitration panel "exceeded its powers" under Section 10(a)(4) of the Act by imposing its own policy choice in lieu of identifying and applying a rule of decision derived from the FAA, maritime law, or New York law. In short, Justice Alito, writing for the 5-3 majority (Justice Sotomayor did not participate) , found 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…"

If you have any questions regarding this Consumer Financial Services Alert or the Act and its implementing regulations, you may contact **Richard Gottlieb**, director of the Financial Industry Group, at 312-627-2196, or **Arthur Axelson**, the author of this alert and leader of Dykema's Financial Services Regulatory Practice, at 202-906-8607.

Attorneys

Joseph H. Hickey

Theodore W. Seitz

Michael P. Wippler