



## News Release

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### **Supreme Court Affirms Arbitrator's Authority, If Not His Judgment, in *Oxford Health Plans v. Sutter***

*Ruling Will Encourage Greater Clarity in Arbitration Clauses of Future Contracts by Insurers*

**CHICAGO – (June 10, 2013)** The Supreme Court issued a unanimous decision affirming a Third Circuit decision upholding an arbitrator's authority in *Oxford Health Plans v. Sutter*. DRI's Center for Law and Public Policy had filed an amicus brief on the merits in the U.S. Supreme Court, supporting the petitioner in *Oxford Health Plans v. Sutter*. The brief had taken issue with the arbitrator's interpretation of the contract and some of DRI's arguments appeared to have resonated with the Court, which ruled solely on the authority to interpret the contract and not on the substance of the interpretation.

The case arises out of a professional services contract between Oxford Health Plans and one of its contracted health care providers, Dr. John Ivan Sutter. The agreement has a typical broad arbitration clause, which reads, "No civil action concerning any dispute arising under this agreement shall be instituted before any court, and all such disputes shall be submitted to final and binding arbitration in New Jersey, pursuant to the Rules of the American Arbitration Association with one arbitrator."

In 2002, Sutter filed a complaint against Oxford in state court, alleging contract violations and seeking to proceed on behalf of a class of contracted physicians. The state court granted Oxford's motion to refer the case to arbitration, leaving it to the arbitrator to resolve whether class proceedings would be available in that forum. After the Supreme Court's decision in *Green Tree Financial Corp. v. Bazzle*, the arbitrator ruled that the standard arbitration clause quoted above "must have been intended" to authorize class actions. He reasoned that the clause broadly prohibited "civil actions" in court; that class actions in court were a type of prohibited "civil action"; and that the referral of "all such disputes" to arbitration therefore showed intent to permit class arbitration. He also pointed out that if class arbitration were not permitted, the broad prohibition on court actions "would mean that class actions are not possible in any forum."

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Similarly, he commented that “since Oxford successfully invoked the arbitration clause to prohibit a class action in court, it ought to be bound by judicial estoppel” not to argue against the maintenance of a class arbitration. In 2005, the arbitrator certified a plaintiff class, and the courts refused to vacate that determination. The arbitration has since proceeded on a class basis, with bifurcated phases.

After the Supreme Court *Stolt-Nielsen* decision, Oxford asked the arbitrator in this case to reconsider his original clause construction. The arbitrator agreed that *Stolt-Nielsen* was controlling authority, but distinguished it on the ground that his ruling had been based on “the parties’ intent as evidenced by the words of the arbitration clause,” which he had concluded “unambiguously evinced an intention to allow class arbitration, indeed to require it.” He also reiterated his view that Sutter must surely be able to maintain a class action somewhere, and that Oxford should be “judicially estopped from claiming that this case cannot proceed in arbitration as a class action” because it had invoked the arbitration clause to remove the case from state court.

The Third Circuit affirmed denial of Oxford’s motion to vacate the arbitrator’s decision under Section 10(a)(4) of the Federal Arbitration Act.

DRI filed amicus briefs at both the petition and merits stages before the Supreme Court. DRI argued in part, “Compelling parties to resolve disputes through costly, time-consuming, and high-stakes class-wide arbitration, when the parties have not agreed to do so, frustrates the parties’ intent, undermines their agreements, and erodes the benefits offered by arbitration as an alternative to litigation. Imposing class arbitration on parties who have not agreed to that procedure, conflicts with the central goal of the Federal Arbitration Act: to ensure that arbitration agreements are enforced strictly according to the terms adopted by the parties.”

In an opinion by Justice Kagan, the Court determined that the arbitrator’s decision in this case survives judicial review under §10(a)(4). Critically, the Court noted that Oxford had conceded below that it had agreed to have the arbitrator decide the “question of arbitrability” (*i.e.*, whether the contract allowed for class arbitration). Because of that concession, the Court held that it could not disturb the arbitrator’s ruling that the contract allowed class arbitration. The Court indicated that whether arbitrators do indeed have the power to determine arbitrability would be “a different issue” in light of *Stolt-Nielsen*, but would not decide the issue in this case because of Oxford’s concession. In emphasizing that its opinion should not be construed as endorsement of the particular contract interpretation in this case, the Court cautioned that “[n]othing we say in this opinion should be taken to reflect any agreement with the arbitrator’s contract interpretation, or any quarrel with Oxford’s contrary reading.”

In a separate concurrence, Justice Alito stated that the Court would have “little trouble” concluding that class arbitration under the contract was improper, citing several of the same arguments raised in DRI’s amicus brief. But he agreed that because of Oxford’s concession, affirmance of the Third Circuit’s decision was the appropriate disposition on the record in this case.

Jerry Ganzfried, Chair of DRI’s Amicus Committee and author of the Oxford brief, said, “The Court’s latest iteration of the established principle that arbitration is based on consent, should remind parties drafting (or revising) contracts in the future to be as clear, unambiguous and explicit as possible in addressing arbitration in general and class arbitration in particular.”

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DRI brief authors Jerrold J. Ganzfried and John F. Stanton of Holland & Knight, Washington, D.C., are available for interview or for expert comment through DRI's Communications Office.

For the full text of the merits amicus brief, [click here](#). For a copy of the Court's decision, click [here](#).

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