

# U.S. Supreme Court Upholds Arbitrator's Decision Finding that Contract Provides for Class Arbitration

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[One U.S. Supreme Court decision](#) has not received great attention from the media, but it may have considerable impact on how employers structure their relationships with employees. In this instance, the issue is what authority does an arbitrator have to interpret contractual terms so as to provide for class arbitration. Justice Kagan, without dissent, explained that the Court viewed arbitration clauses that provide for all civil actions to be arbitrated as giving arbitrators the authority to find a contractual basis to support class arbitration.

In [Oxford Health Plans LLC v. Sutter, Case No. 12-135 \(U.S. Supreme Court June 10, 2013\)](#), the Court had to decide if the U.S. Court of Appeals, Third Circuit, correctly affirmed a trial court's decision denying a motion to vacate a decision by an arbitrator who found that class arbitration was available under a medical fee-for-services contract.

In this case, the doctor was not an employee of medical plan, but had signed a contract with the plan to provide medical services in exchange for payment. That contract contained a clause whereby both parties agreed to submit all contractual disputes to "final and binding arbitration." The contract provided that the plan would pay the doctor (and other contracted physicians), at set rates for various services they provided. The doctor disputed that he was paid promptly, and in full, as allegedly required by the contract and various state laws. The doctor filed a proposed class action in New Jersey state court.

The plan moved in New Jersey state court to compel arbitration and succeeded. The parties then submitted to the arbitrator the issue of whether the contract provided for class arbitration. The arbitrator determined that the medical services contract supported class arbitration based on a provision which stated that "[n]o civil action concerning any dispute arising under this Agreement shall be instituted before any court,..." The arbitrator read the clause as encompassing all civil actions, including class actions. The plan disagreed with the arbitrator and filed a motion in federal court to vacate the arbitrator's decision and pled that the arbitrator "exceeded [his] powers" under section 10(a)(4) of the Federal Arbitration Act. The plan also raised a prior decision by the U.S. Supreme Court which held that class arbitration could not be compelled under the Federal Arbitration Act unless

the contract showed that the parties agreed to class arbitration. The plan's multiple motions and efforts to vacate the arbitrator's decision in the lower courts failed due to judicial findings that the arbitrator appropriately interpreted the intent behind the arbitration clause.

The U.S. Supreme Court reviewed the case due to a split in the circuits of the U.S. Court of Appeals over whether similar circumstances provided a basis for a court to vacate an arbitrator's award. The U.S. Supreme Court cited a number of opinions that over many years held that arbitrators possess a broad authority to interpret contracts due to their contractually granted authority to determine the intent of the parties. The Court also distinguished *Stolt-Nielsen*. In that case, the arbitrators did not interpret the contract of the parties and there was no agreement to support class arbitration. Moreover, the arbitrators in *Stolt-Nielsen* strayed from their interpretative role.

The plan also urged that the garden-variety arbitration clause at issue could not reasonably be read as supporting class arbitration. In response, the Court stated that such merits based arguments failed to provide a basis for overturning the arbitrator's reading of the arbitration clause. In sum, "[t]he arbitrator's construction holds, however good, bad, or ugly." Restated, the arbitrator need only interpret the contract, and the plan's efforts to vacate the arbitrator's reading of the contract would fail. In addition, the arbitrator did not "exceed" the powers granted to him by the contract. Still, the Court was careful to include a statement noting that the plan never asserted that class arbitration constituted a question of arbitrability, and stressed that it had agreed that the arbitrator would decide whether the contract provided for class arbitration.

There are potential multiple lessons from this case for employers who use arbitration agreements. First, review employee arbitration agreements to see if they have similar clauses that an arbitrator could justifiably read as supporting class arbitration. Second, be wary of agreeing to have arbitrators decide the issue of class arbitration before exploring whether the possibility exists to contest class arbitration through proceedings that focus on the question of arbitrability. Third, evaluate and decide what is preferred, class actions or class arbitration. The opinion strongly suggests that all employers should undertake an analysis of these and other related issues, especially if they use arbitration agreements with their employees.

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