

News Release

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DRI – The Voice of the Defense Bar Files Amicus Brief with Supreme Court in *Oxford Health Plans v. Sutter*

CHICAGO – (January 30, 2013) DRI – *The Voice of the Defense Bar* has filed an amicus brief on merits with the U.S. Supreme Court, in support of the petitioner in *Oxford Health Plans v. Sutter*. DRI last year submitted an amicus brief supporting the petition for a writ of certiorari in the case.

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."

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 clearly policy-based positions 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.

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

The core question is whether an arbitrator acts within his powers under the Federal Arbitration Act, 9 U.S.C. § 10(a)(4), if he bases a determination that the parties affirmatively “agreed to authorize” class arbitration, as required under *Stolt-Nielsen*, solely on their adoption of a routine arbitration clause such as the one at issue in this case: “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.”

The DRI brief declares 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."

The case is scheduled for oral argument on March 25, 2013, and a decision is expected in late spring or early summer. 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 amicus brief, [click here](#).

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