

Oral arguments heard in Stolt case

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Antitrust specialists say a high-profile Supreme Court case may pave the way for more class participation in antitrust lawsuits that go to arbitration.

Lawyers for tanking company Stolt-Nielsen and its customer, AnimalFeeds, presented oral arguments to the Supreme Court yesterday as to whether class arbitrations can be imposed on companies even when their arbitration clauses are silent on the issue.

Last year, an arbitration panel hearing the companies' antitrust dispute ruled that a class of purchasers similar to AnimalFeeds could be included in the arbitration. In court, Stolt-Nielsen argued that it was not within the arbitrators' power to involve a class, when the arbitration agreement was only between it and AnimalFeeds.

Although the case hinges on maritime law, some antitrust specialists say that the decision is of the utmost importance for the larger antitrust litigation world. "There's no question that the domain here is antitrust," one specialist says, "and this is something every antitrust lawyer should be following."

Before the Supreme Court yesterday, lawyers for Stolt-Nielsen argued that it would be unprecedented to allow a class to become involved in an arbitration under maritime law, when a contract doesn't explicitly allow for it.

"Unlike courts, arbitrators derive their authority solely from the consent of the parties to a particular agreement," said Seth Waxman, partner at Wilmer Cutler Pickering Hale & Dorr LLP and counsel to the company. "That agreement determines not only what the parties have agreed to arbitrate, but just as fundamentally, with whom they have agreed to do so."

However, Columbia University law professor Cornelia Pillard, arguing on behalf of AnimalFeeds, said that the panel was well within its rights to allow class participation.

"What the arbitrators did here was interpret the contract as the parties asked them to. They did not impose their own policy judgment," Pillard said. "The justices examined both sides of the argument, and laid out reasoning behind a possible ruling."

During the hearing, the justices questioned the validity of both arguments. Justice Ginsberg said that if the lower court upheld the rights of the arbitrators to allow the class, then the Supreme Court might be tempted to agree.

"The arbitrators answered that question, which they were given authority to do [...] by both sides, and the Second Circuit said that the arbitrators answered within the ballpark," Ginsberg told Waxman. "If we agree

with that, then there's nothing else to consider in this case.”

Background

AnimalFeeds in 2003 sued Stolt-Nielsen, along with fellow tanking companies Odfjell, Jo Tankers and Tokyo Marine, alleging that the companies had engaged in a “global conspiracy to restrain competition in violation of the antitrust laws.” AnimalFeeds asked to bring the case on behalf of all other direct purchasers of bulk liquid transportation services.

After the case was consolidated with other, similar antitrust actions in the US District Court of Connecticut, Stolt-Nielsen moved to enter arbitration, as the two companies had a contract that said arbitration was the preferred method of handling such matters.

The lower court denied the motion, but the Second Circuit Court of Appeals overturned it, sending the case before an arbitration panel to hear the antitrust issue. AnimalFeeds then asked the panel to allow the case to proceed on behalf of the class - something that the companies' arbitration agreement didn't specifically address.

After hearing arguments from both sides, the panel agreed that the arbitration agreement's silence on the subject of class participation meant that the case could proceed as a class arbitration. The panel found that regardless of the long history of not allowing class involvement in maritime arbitration contracts, the absence of a definitive class action element in the agreement did not preclude the case from continuing as a class arbitration.

Stolt-Nielsen again petitioned the district court to vacate the panel's ruling, saying that the ruling ignored federal maritime law, which should be dictated by custom. The district court agreed, and the Second Circuit again overturned that decision, paving the way for the Supreme Court case.

Impact

Depending on the scope of the court's decision, the impact on companies involved in antitrust litigation could be significant. Jonathan Blackman, litigation partner at Cleary Gottlieb Steen & Hamilton LLP in London, says that arbitration is an established practice in antitrust suits where the companies either agree to it, or have a contract establishing it as a conflict resolution method.

If the courts decide it broadly, Blackman says, defendants in antitrust cases who opt for arbitration to decide the matter could find themselves facing a class of plaintiffs, rather than just the company on the other side of the table.

However, he says, “The complexities of the case suggest that there might well be a narrow decision.” If the court rules only on the specific matter at hand, he says, the impact on future antitrust arbitration cases could be minimal.

Julie Bedard, an antitrust arbitration specialist at Skadden, Arps, Slate, Meagher & Flom LLP in New York, says the court's decision in the Stolt-Nielsen case has the potential to reverse the tide on class arbitrations.

"A positive answer [for petitioner Stolt-Nielsen] by the Supreme Court may constrain the development of antitrust and other class arbitrations," Bedard says, adding that the court could also limit the scope of its opinion to maritime cases. "A negative answer would likely focus the debate onto the enforcement of class arbitration waivers, which many companies have started to include in their contracts."

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Before the Supreme Court

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