



April 2010

[www.ssd.com](http://www.ssd.com)

## Supreme Message From the *Stolt-Nielsen* Case: No Class Arbitration Unless Parties Contractually Agree

On April 27<sup>th</sup>, the United States Supreme Court held that "a party may not be compelled under the [Federal Arbitration Act] to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed to do so.*" *Stolt-Nielsen v. AnimalFeeds Int'l Corp.*, Case No. 08-1198, at 20 (April 27, 2010) (emphasis in original). In other words, class arbitrations are not permitted unless the parties contractually agree to authorize such actions – silence in an arbitration clause will not suffice. This decision will impact both the enforceability of arbitration agreements that are silent on the issue of class actions, as well as arbitration agreements that expressly waive the parties' right to participate in class action lawsuits and arbitrations. Indeed, state and federal court decisions striking class action waivers from arbitration agreements and permitting class arbitrations appear to be fundamentally at odds with the Court's ruling in *Stolt-Nielsen*.

Businesses should consider how to structure their future arbitration agreements, particularly those with employees and consumers, and how to address cases arising under their existing agreements, in view of the Supreme Court's guidance in *Stolt-Nielsen*.

The parties' arbitration agreement in *Stolt-Nielsen* was silent on whether class arbitrations were permitted. A panel of arbitrators determined that the "silent" arbitration agreement allowed for class arbitration. The

Founded in 1890, Squire, Sanders & Dempsey L.L.P. has lawyers in 32 offices and 15 countries around the world. With one of the strongest integrated global platforms and our longstanding one-firm philosophy, Squire Sanders provides seamless [legal counsel worldwide](#).

### Contacts:

[Pierre H. Bergeron](#)  
+1.513.361.1289  
+1.202.626.6600

[Alexandra A. Bodnar](#)  
+1.213.689.5184

[Amy L. Brown](#)  
+1.202.626.6707

[Mark C. Dosker](#)  
+1.415.954.0210

Squire Sanders emphasizes quality, efficiency and alignment with client goals as core standards. Our [Partnering for Worldwide Values](#) initiative is focused on continuously improving our service delivery to maximize the value of our services to clients. Squire Sanders wholeheartedly endorses the Association of Corporate Counsel's Value Challenge® and encourages and manages development and implementation of processes and tools to continually improve staffing and pricing models, training and resource optimization, knowledge management and more.

Supreme Court held that the arbitration panel exceeded its powers when it determined that class arbitrations should be permitted rather than identifying and applying a rule of decision derived from the Federal Arbitration Act (the FAA) or from either maritime or New York law.

The Court held that while the interpretation of an arbitration agreement is generally a matter of state law, "the FAA imposes certain rules of fundamental importance, including the basic precept that arbitration 'is a matter of consent, not coercion.'" Slip Op. at 17. The Court emphasized that the consensual nature of private dispute resolution allows parties to structure their arbitration agreements as they see fit. Importantly, the Court held that it is clear from "precedents and the contractual nature of arbitration that parties may specify *with whom* they choose to arbitrate their disputes," and "courts and arbitrators must give effect to these contractual limitations." *Id.* at 19, 20 (emphasis in original).

In reaching its decision, the Court recognized that the "relative benefits of class-action arbitration are much less assured" as compared to bilateral arbitration. Slip Op. at 22. In class-action arbitration an arbitrator is no longer resolving a single dispute between two parties, but instead is charged with resolving many disputes between hundreds or thousands of parties, some of whom are absent parties. The private and confidential nature of arbitration is lost, and while the stakes of class arbitrations are just as high as class action lawsuits, the scope of judicial review is much more limited. *Id.* at 23. "[T]he differences between bilateral and class-action arbitration are too great for arbitrators to presume, consistent with their limited powers under the FAA, that the parties' mere silence on the issue of class-action arbitration constitutes consent to resolve their disputes in class proceedings." *Id.*

The Court's decision could have a significant impact on the current litigation involving the treatment of arbitration agreements which are silent on class proceedings and the enforceability of class action waivers in arbitration agreements. Moreover, there is at least one other case currently before the Court on a petition for *certiorari* that appears to have been held by the Court pending *Stolt-Nielsen*. The Court's actions on that case may give further guidance on how *Stolt-Nielsen* will be applied.

For more information on the *Stolt-Nielsen* case or Squire Sanders arbitration practice, please contact your principal Squire Sanders lawyer or one of the lawyers

Squire Sanders publishes on a number of other topics. To see a list of options and to sign up for a mailing, visit our [subscription page](#).

Cincinnati · Cleveland · Columbus ·  
Houston · Los Angeles · Miami ·  
New York · Palo Alto · Phoenix ·  
San Francisco · Tallahassee ·  
Tampa · Tysons Corner ·  
Washington DC · West Palm Beach |  
Bogotá+ · Buenos Aires+ · Caracas · La  
Paz+ · Lima+ · Panamá+ ·  
Rio de Janeiro · Santiago+ ·  
Santo Domingo · São Paulo |  
Beirut+ · Bratislava · Brussels ·  
Bucharest+ · Budapest · Frankfurt · Kyiv  
· London · Moscow · Prague · Riyadh+ ·  
Warsaw | Beijing ·  
Hong Kong · Shanghai · Tokyo |  
+Independent network firm

listed in this Alert.

Squire Sanders lawyers counsel clients in nationwide, multistate and statewide class action proceedings in both litigation and arbitration throughout the United States. We routinely represent clients in litigation involving the enforceability of arbitration agreements. But before actual disputes ever arise, our lawyers anticipate the potential for challenges and craft strong arbitration clauses for our firm's clients.



---

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

©Squire, Sanders & Dempsey L.L.P.  
All Rights Reserved  
2010

This email was sent by Squire, Sanders & Dempsey L.L.P.  
1201 Pennsylvania Avenue, N.W., Suite 500, Washington, D.C. 20004, USA

We respect your right to privacy – [view our policy](#)

[Manage My Profile](#) | [One-Click Unsubscribe](#) | [Forward to a Friend](#)