

November 06, 2009

Public Justice has just filed an *amici* brief urging the U.S. Supreme Court to reject arguments by four of the world's largest shipping companies -- already convicted of price fixing -- that they cannot be held fully accountable in arbitration because the Federal Arbitration Act ("FAA") bars class actions against them. The companies claim that the FAA silently bars arbitrators from allowing cases to proceed as class actions if a company's arbitration clause authorizes them to resolve "any dispute," but does not specifically mention class actions.



The case -- *Stolt-Nielsen v. Animalfeeds* -- involves a decision by a panel of three arbitrators that an antitrust case against the shippers could proceed in arbitration on a class action basis, where the arbitration agreement was silent (did not directly say anything either way) on the subject of whether the arbitration could take place on a class action basis. The decision of the panel of arbitrators was upheld by the United States Court of Appeals for the Second Circuit. The arbitrators have not said the case will be a class action, just that it can be. The companies want the Supreme Court to say the FAA precludes that.

We weighed in because the arguments advanced by the price fixers, supported by the U.S. Chamber of Commerce and a few other groups, would allow corporate wrongdoers to effectively ban class actions against them and eliminate access to justice for millions. Our Access to Justice Campaign and Class Action Preservation Project have won landmark victories striking down contract terms banning class actions under state law where those provisions would immunize corporations from consumer protection or civil rights laws. The defendants in this case are asking the Court to read into the FAA a rule that would support an argument that the FAA preempts those state laws.

Our *amici* brief notes that the FAA does not prohibit, disfavor or even mention class actions. The Court has long held that any doubts concerning the scope of arbitration should be resolved in favor of arbitration. **Moreover, if the Court adopts the companies' argument, defendants throughout the nation would argue that the myriad state laws preserving class actions are impliedly preempted -- i.e., wiped out - by the FAA.**

To read our *amici* brief, [click here](#).

To read the highlights of our Class Action Preservation Project, [click here](#).

Thanks to Michael J. Quirk of Williams Cuker Berezofsky in Philadelphia, who authored the brief with input from Public Justice's Paul Bland and me. Joined by Public Good, it emphasizes the dangerous and potential far-reaching effects of the corporations' arguments.

Thanks to you, too, for your support of Public Justice, our Access to Justice Campaign, and our Class Action Preservation Project. With your help, we are making a huge difference. - Arthur

Arthur Bryant
Executive Director
Public Justice
and the Public Justice Foundation

P.S. Please forward this email to friends and colleagues who'd be interested. (When you do so, delete the information below about unsubscribing, or they could unsubscribe you.) To make a special contribution, renew your membership, or join us, please [click here](#).

email: abryant@publicjustice.net

voice: 202-797-8600

web: <http://www.publicjustice.net>