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Published on *Managed Healthcare Executive*  
(<http://managedhealthcareexecutive.modernmedicine.com>)

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# Health plans must scrutinize contracts

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Publish Date: AUG 01,2013

A recent Supreme Court Decision underscores the necessity of counsel reviewing the dispute resolution terms in health plan contracts with providers. In *Oxford Health Plans LLC v. John Ivan Sutter* (2013 WL 2459522 (U.S.)), the Court held that an arbitrator did not exceed his powers in authorizing a class arbitration, despite *Oxford's* assertion that he acted outside the scope of his delegated authority.



*Sutter*, a pediatrician, provided medical services to *Oxford Health Plans'* insureds under a fee-for-service contract that required binding arbitration of contractual disputes. After several years of working under contract with *Oxford*, *Sutter* filed suit against *Oxford* in New Jersey Superior Court on behalf of himself and a proposed class of other New Jersey physicians under contract with *Oxford*. The complaint alleged that *Oxford* had failed to make prompt payment to the doctors in violation of their agreements and various state laws.

*Oxford* moved to compel arbitration of *Sutter's* claims, relying on a clause in their contract that prohibited civil actions such as this being brought before any court, but rather "shall be submitted to final and binding arbitration in New Jersey, pursuant to the rules of the American Arbitration Association with one arbitrator." The state court granted *Oxford's* motion, thus referring the suit to arbitration.

The parties agreed that the arbitrator should decide whether their contract authorized class arbitration, and he determined that it did. Noting that the question turned on the construction of the parties' agreement, the arbitrator focused on the text of the clause, and he reasoned that the clause sent to arbitration the same "universal class of disputes" that it barred the parties from bringing as civil actions in court.

*Oxford* filed a motion in federal court to vacate the arbitrator's decision on the grounds that he had exceeded his powers under § 10(a)(4) of the FAA. The District Court denied the motion, and the Court of Appeals for the Third Circuit affirmed.

While the arbitration proceeded, the Supreme Court held in *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 130 S.Ct. 1758, 176 L.Ed.2d 605, that an arbitrator may employ class procedures only if the parties have authorized them. In contrast to the *Oxford* proceedings, the parties in *Stolt-Nielson* had stipulated that they had never reached an agreement on class arbitration. *Oxford* immediately asked the arbitrator to re-consider, a request based on what appears to be a misunderstanding of the Supreme Court's holding. The arbitrator issued a new opinion, holding that *Stolt-Nielson* had no effect on the case because the *Oxford* agreement did authorize class arbitration.

The Supreme Court's holding illustrates the stark contrast between *Stolt-Nielson* and the *Oxford* proceeding. In the former, the Court found that the arbitrators did not construe the parties'

contract and did not identify any agreement authorizing class proceedings. When the Court set aside the arbitrator's decision, they did so not because the contract was misinterpreted by the arbitrator, but rather because the arbitrator had abandoned his interpretive role. In *Oxford*, the Court finds that the arbitrator did construe the contract and found in it an agreement to permit class proceedings. But, as the Court explains, to overturn the arbitrator's decision, they would need to rely on a finding that the arbitrator misapprehended the parties' intent. However, §10 (a)(4) bars that path: it permits courts to vacate an arbitral decision only when the arbitrator strayed from his delegated task of interpreting a contract, not when he performed the task poorly.



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