# CLASS ACTION: NEW HURDLES

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# UPDATE REGARDING ACCESS TO CLASS ACTION STATUS

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## DESCRIPTION

Recent U.S. Supreme Court decisions have clarified procedural barriers to class actions. Class arbitration cannot be imposed where arbitration clauses are silent on that issue. Certain state laws prohibiting class actions do not preclude federal courts from entertaining class actions under FRCP Rule 23.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010)

Primary Holding: Imposing class arbitration on parties whose arbitration clauses are silent on the issue of class arbitration is inconsistent with the FAA.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

Stolt-Nielsen, a shipping company, filed an application in federal district court to vacate the decision of an arbitral panel allowing AnimalFeeds, a supplier of the raw ingredients for animal feed, to pursue its antitrust claims through class arbitration.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

Class Rule 3, one of the Class Rules developed by the American Arbitration Association in the wake of the Supreme Court's decision in *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444 (2003), requires that an arbitrator determine as a threshold matter whether the applicable arbitration clause permits class arbitration.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

The arbitration panel in this case improperly exceeded its powers by imposing its own policy choice instead of applying a rule derived from the Federal Arbitration Act ("FAA") or from maritime or New York law.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

A fundamental principle of the FAA is that arbitration is a matter of consent, and the intent of the parties is to be given effect.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

"[A] party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so."

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

Because the differences between class arbitration and bilateral arbitration are great, an arbitrator may not presume that the parties consented to class arbitration simply because they agreed to arbitrate.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

The main differences cited by the Court are that, in class arbitration, an arbitrator resolves disputes between hundreds or thousands of parties instead of a single dispute between two parties, the presumption of confidentiality and privacy does not apply, and the stakes are higher even though judicial review is much more limited.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

In this case, where the parties stipulated that there had been no agreement as to class arbitration, the arbitrator could not compel the parties to submit to class arbitration, and the Court reversed the Second Circuit's decision to the contrary.

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## **Stolt-Nielsen S.A. v. AnimalFeeds International Corp.,** 2010 U.S. LEXIS 3672 (Apr. 27, 2010), *Cont.*

Imposing class arbitration on parties whose arbitration clauses are silent on the issue of class arbitration is inconsistent with the FAA.

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**Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010)

Primary Holding: A state law that prohibits class actions seeking certain relief does *not* preclude a federal district court sitting in diversity from entertaining a class action under Rule 23.

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**Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

Shady Grove, the assignee of an insured, brought a putative class against Allstate Insurance Company in federal district court seeking statutory interest that had accrued on overdue insurance benefits.

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**Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

A New York state law prohibits class actions for lawsuits that seek penalties or statutory minimum damages, which includes the statutory interest sought by Shady Grove.

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## **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

Federal Rule of Civil Procedure 23, which governs federal class actions, provides that a class action may be maintained if the lawsuit satisfies the criteria set forth in the rule, most notably Rule 23(a)'s requirements of numerosity, commonality, typicality, and adequacy of representation.

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## **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

The main issue in this case is whether a state law prohibiting class actions seeking certain relief precludes a federal district court sitting in diversity from entertaining a class action under Rule 23.

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## **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

The Second Circuit, affirming the federal district court, held that the New York state law *did* preclude a federal court from entertaining the case as a class action, because the state law and Rule 23 addressed different issues and did not conflict, and because the state law was "substantive" and thus must be applied by a federal court sitting in diversity.

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**Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

The Supreme Court reversed the Second Circuit's decision, holding that New York's law does conflict with Rule 23, as New York's law addresses the same procedural issue as Rule 23, whether a litigant may maintain a class action.

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**Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

Rule 23 provides that a litigant may maintain a class action if the criteria of Rule 23 are satisfied, and this is in conflict with New York's law, which would preclude litigants from maintaining a class action based on the particular relief that is sought.

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**Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

Scalia's majority opinion states that "Rule 23 unambiguously authorizes *any* plaintiff, in *any* federal civil proceeding, to maintain a class action if the Rule's prerequisites are met."

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## **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

A plurality of the Court proceeded to offer a broad position on when a Federal Rule is valid under the Rules Enabling Act, stating that the validity of a Federal Rule depends entirely upon whether it regulates substance or procedure, and does not depend upon the substantive or procedural nature of the state law that is affected.

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## **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

Justice Stevens, who joined the plurality in the Court's majority opinion, did not go this far, and stated in his concurrence that a Federal Rule may be invalid under the Rules Enabling Act if the state law that it would displace "is procedural in the ordinary sense of the term but is so intertwined with a state right or remedy that it functions to define the scope of the state-created thing."

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## **Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Company**, 130 S. Ct. 1431 (Mar. 31, 2010) *Cont.*

The plurality acknowledges that "keeping the federal-court door open to class actions that cannot proceed in state court will produce forum shopping," but says that this is inevitable and that a Federal Rule that governs procedure is valid whether or not it induces forum shopping.

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Tony Lathrop brings experience and a high level of analytical ability, professional credibility and creativity to handling litigation matters. He rigorously represents his clients' interests in a diverse range of claims and actions. A certified mediator, Mr. Lathrop has extensive experience representing business clients in mediation. His service to the legal profession in North Carolina has allowed him to develop relationships across the state that benefit the firm's clients.

Mr. Lathrop has handled cases in North Carolina's courts, before arbitrators and before the North Carolina Industrial Commission. Recent matters include:

- A breach of a contract claim (sale of a $40 million manufacturing facility), representing a plaintiff Fortune 500 corporation.
- Approximately 20 municipal eminent domain actions, representing the condemnor.
- A trademark infringement and breach of contract action involving competing cable television networks.
- A post-acquisition dispute over corporate liability for property taxes, software and depreciation of real estate.
- Summary judgment for defendants on a police liability claim in Federal court, which was affirmed by the Fourth Circuit.
- A breach of contract claim (pricing, cancellation costs), representing a tier-one automotive parts supplier.
- A coverage dispute over provisions of a contingent automobile liability insurance policy in connection with the vehicle leasing program of a Fortune 500 company.
- A trade secrets/corporate raiding case involving competing general contractors.
- A motor vehicle products liability claim defending an international vehicle manufacturer.
- A helicopter products liability claim defending an international manufacturer.

**Representative Cases**

Kling v. City of Monroe, 86 Fed Appx. 662, 2004 U.S. App. LEXIS 2093 (4th Cir. (NC) 2004). Defended city in connection with §1983 and state law police/municipal liability claims. Summary judgment for city affirmed.

Nadelin v. City of Monroe, 166 F.3d 333, 1998 WL 802021 (4th Cir. (N.C.) 1998). Defended city in connection with §1983 and state law police/municipal liability/excessive force claims. Summary judgment for city affirmed.