
Federal Court Vacates Arbitration Award That Permitted Class Arbitration of Antitrust Claims Against Parcel Tanker Owners

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WilmerHale secured an important win for our client Odfjell when United States District Judge Jed S. Rakoff ruled this week that customers could not bring class arbitrations against Odfjell and other parcel tanker owners. This is the most prominent court decision vacating an arbitration tribunal's construction of an arbitration clause to permit class arbitration since the Supreme Court held three years ago in *Green Tree Financial Corp. v. Bazzle* that it was up to arbitration tribunals to make such determinations.

Odfjell owns and operates parcel tankers, which transport bulk chemicals and other liquids around the world. The claimants in the arbitration asserted that they overpaid for their parcel tanker shipments because of an alleged conspiracy between Odfjell and certain other parcel tanker owners. The claimants sought to arbitrate antitrust claims on behalf of themselves and a class consisting of every customer that chartered ships from these companies over a four-year period.

The arbitration clauses governing the proceedings are part of form contracts that are pervasive in the parcel tanker industry. Parcel tanker owners and their customers (most of whom are from outside the United States) have used these contracts for nearly 30 years and have arbitrated their disputes on thousands of occasions. The contracts, however, have never previously been the basis for a class arbitration. The arbitration tribunal nonetheless issued a partial final award for the claimants, concluding that these contracts permit class arbitration.

The WilmerHale legal team quickly filed a petition to vacate the award in the United States District Court for the Southern District of New York. Courts rarely vacate arbitration awards. We were nonetheless able to convince Judge Rakoff that the tribunal had manifestly disregarded the law in this case. Judge Rakoff ruled that the tribunal ignored the governing law as established by WilmerHale in the briefs and at the evidentiary hearing before the tribunal – that claimants cannot arbitrate claims on behalf of a class when their dispute arises out of maritime contracts that do not provide for the possibility of class arbitration.

This decision affects all businesses that employ arbitration clauses. As arbitration clauses are incorporated into more contracts, plaintiffs have increasingly attempted to adapt class action litigation into an arbitration setting. Judge Rakoff's opinion establishes, however, that plaintiffs

cannot arbitrate claims on behalf of a class unless the parties agreed to a class arbitration in the first instance.

[Steve Cherry](#) argued the petition before Judge Rakoff on behalf of Odfjell and its co-petitioners. Other members of WilmerHale's Antitrust and Litigation Departments responsible for this victory include William Kolasky, [Leon Greenfield](#), [Rachael Kent](#), David Olsky, and Jennifer Morrison.