WilmerHale Wins Significant Antitrust Victory for Odfjell ASA in Second Circuit

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The firm won an important victory for client, Odfjell ASA, and its American subsidiary in the United States Court of Appeals for the Second Circuit in *JLM Industries, Inc. v. Stolt-Nielsen SA*. The decision, which had attracted considerable interest from the antitrust bar, confirmed that an arbitration clause in a customer contract may govern future claims of price-fixing that arise from that contract.

JLM purchases, sells, and trades bulk chemicals. It contracted with the owners of parcel tankers (including Odfjell) to ship these chemicals to and from the United States and elsewhere. In its contracts with the owners, JLM agreed to abide by an arbitration clause that governed "any and all differences and diputes of whatsoever nature arising out of" those contracts.

On February 26, 2003, JLM filed a class action suit against the owners in the United States District Court for the District of Connecticut. JLM alleged that the owners violated the Sherman Act and Connecticut law by conspiring to fix worldwide prices for ocean shipping services. JLM purported to file the suit on behalf of all persons or entities that had paid the owners to transport liquid chemicals for the previous five years.

On behalf of Odfjell, WilmerHale filed a motion to compel arbitration in accordance with the arbitration clause in Odfjell's contracts with JLM. The district court ruled that JLM's allegations of price-fixing fell outside the scope of the arbitration clause, and denied the motion. The district court's decision was appealed.

On October 26, the Second Circuit reversed the district court's decision and required that JLM submit its claim to arbitration. First, the court concluded that JLM had agreed to be bound to the arbitration clause. JLM had argued that the arbitration clause was part of a contract of adhesion but the court ruled that such an argument would have to be resolved by the arbitration panel. Second, the court ruled that the arbitration clause was broad enough to encompass JLM's claims, and could be enforced even by owners that were not signatories to JLM's contracts. Third, the court held that considerations cited by JLM — the complexity of a horizontal price-fixing case and the prospect of an unfavorable choice of law to govern the arbitration — did not preclude arbitration. Finally, the Court held that JLM's state law claims, which arose from the same facts as JLM's Sherman Act claim,

must be submitted to arbitration.

The decision is an important victory for Odfjell, and for all companies that use arbitration clauses in customer contracts. It makes clear that plaintiffs that have signed broad arbitration clauses must submit their antitrust claims to arbitration — not litigation. William Kolasky and Steven Cherry led the WilmerHale team working on the case. Murtha Cullina LLP, Shipman & Goodwin LLP, and White & Case LLP represented the other defendants.