



***Summary of the Decision in the Case Against
Westwood College, Westwood College Online and Redstone College***

On July 16, 2010, a distinguished Arbitrator from the American Arbitration Association class action panel found that a case against Westwood College, Westwood College Online and Redstone College filed by James, Hoyer, Newcomer, Smiljanich and Yanchunis cannot proceed as a class action. The Arbitrator, William H. Baker, specifically found that the arbitration clause neither permitted class-wide arbitration nor is it unconscionable.

Peter Homer, of HomerBonner in Miami, which represented Westwood College, explained that the award “will echo through the legal community because it appears to be the first of its kind following the April 2010 United States Supreme Court landscape-altering ruling in *Stolt-Nielsen vs. Animalfeeds International*.” That case involved an alleged “silent” arbitration agreement—that is, an arbitration agreement that neither expressly permitted nor expressly prohibited class-wide arbitration. The Supreme Court held that an arbitration agreement that did not evince an intent to permit class arbitration could not be construed to permit it merely because it did not preclude it. In effect, this reversed the wave of arbitral decisions that had permitted class arbitration where there was no express preclusion.

In the case against Westwood College, the Arbitrator applied *Stolt-Nielsen* and found that the parties had not agreed to permit class arbitration even though there was no express provision permitting or prohibiting it.

The Arbitrator then examined the arbitration clause to determine whether the lack of class arbitration rendered the clause unconscionable. In a detailed review of seven key factors spelled out by the Colorado Supreme Court to determine enforceability, the arbitrator made it clear that the arbitration clause is not unconscionable.

This clear victory for Westwood College means the Florida class-action law firm can only pursue its supposed claims on an individual, student-by-student basis and not as a class action lawsuit on behalf of all students. To a plaintiffs’ class action firm, whose business model depends on the in terrorem threat of class-wide liability, this is sharp blow.