



Berkeley Heights attorney wins case before U.S. Supreme Court

Eric D. Katz argues before U.S. Supreme Court

Eric D. Katz argues his first case before the U.S. Supreme Court. *(Todd Crespi)*

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The "only way to address these issues is to allow class action, otherwise the big corporations win."

BERKELEY HEIGHTS — Arguing his first case before the United States Supreme Court, a Berkeley Height lawyer won a unanimous 9-0 decision.

"It was another day at the office, with an added kicker as a bonus," Eric D. Katz said of the victory.

A trial attorney and a partner at Mazie Slater Katz and Freeman in Roseland, Katz has lived in Berkeley Heights for more than 20 years. His two children, Alexa, 20, and Josh, 15, went to Washington, D.C., to see him argue the case and, because no cameras of any type are permitted in the courtroom, he hired an artist Todd Crespi, to do a sketch of him at work.



Eric D. Katz

Justice Elena Kagan delivered the unanimous opinion in the case, *Sutter vs. Oxford*, in which the court affirmed the decision of the Third Circuit Court of Appeals. The justices upheld the rights of physicians to arbitrate their claims of improper claims processing against Oxford Health Plans, one of the largest health insurers in the country, on a class-wide basis. Justice Samuel A. Alito filed a concurring opinion joined by Justice Clarence Thomas.

Katz said the decision was important for "employees and consumers in this country, as well, of course, as physicians."

The decision means that people who sign contracts with companies that state in the event of a dispute with the company the person must go to arbitration, do not exclude the individual from filing for a class action arbitration.

Katz said he began working on the case in 2002, when he filed a lawsuit in Superior Court on behalf of his client, John Ivan Sutter, a pediatrician in Clifton, arguing that the arbitration provision in his client's contract

with Oxford Health Plans was "invalid and against public policy." He said he also "argued if the arbitration clause was going to be enforced, the provision should be interpreted as allowing for a class action" arbitration.

Requiring someone to go to arbitration is a way to keep people with disputes out of court, especially small claims courts, Katz said. "Large corporations feel that you definitely have to hire a lawyer" to navigate the arbitration process including knowing where and when to file papers," Katz said. "In addition, they have to pay the arbitrator his fees ... What they are counting on, is you will say 'the heck with it. I'm not going to spend a zillion dollars to win \$500 ... Businesses want you to give up."

By allowing a class action in arbitration, that means there is "one person who is like a representative of everyone who has had the same problem," Katz said.

In the case of Sutter, "he basically stands in the shoes of 20,000 doctors (in New Jersey) with the same problem." He said Sutter suffered an annual loss of about \$1,000 a year over 10 years, which really didn't warrant the cost of a lawsuit, but 20,000 doctors suffering the same loss, \$20 million over 10 years, more than warranted the class action arbitration.

What makes this case so important, Katz said, is the number of agreements out there "that have arbitration agreements with prohibition of class actions." So, for instance, if issues of racial or sexual discrimination come up, "if you were not permitted to go into arbitration as a class, they would need each person to step up to the forefront to file for arbitration. Now, as long as one person is willing to step up that person will address every person's situation." Katz said.

He added that some businesses have already started adding "no class action" clauses in their agreements and is sure more will do so in the future.

Still, there are actions that have been on hold waiting for this decision. "Those cases should benefit greatly from this decision," Katz said.

The decision caused a lot of chatter on the Internet, he said. "Forbes talked about how the business world was disappointed about the decision, while others wrote about how class actions are alive and well."

In the long run, Katz said he believes that the "only way to address these issues is to allow class action, otherwise the big corporations win."

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