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The Supreme Court Delivers a Win for Employers Seeking a Stay in Appeals Involving Arbitration

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By M. Adil Yaqoob

In a significant win for employers, the United States Supreme Court has ruled that the Federal Arbitration Act (FAA) requires an automatic stay of the case at the trial court level whenever a party appeals the trial judge's decision to deny arbitration. This decision means that employers appealing an adverse ruling on a motion to compel arbitration cannot be forced to spend resources on litigating the underlying case while the appellate court reviews the lower court's ruling.

In a 5-4 decision issued on June 23 in a case called *Coinbase v. Bielski*, the Court reversed a Ninth Circuit's order refusing to stay trial court litigation while the company appealed the district court's decision denying arbitration. Justice Brett Kavanaugh, writing for the Court majority, reasoned that because the FAA authorizes interlocutory (i.e. immediate) appeals of lower court decisions denying arbitration, Congress intended to deprive district courts of control of these cases while they are on appeal.

With this ruling, the Court resolved a split amongst the federal courts of appeals. Three circuits—the Second (covering Connecticut, New York and Vermont), Fifth (covering Louisiana, Mississippi, and Texas), and Ninth (covering Alaska, Arizona,

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California, Hawaii, Montana, Nevada, Oregon, and Washington)— previously held that a case involving a denial of a motion to compel arbitration ***is not*** automatically stayed pending appeal but that courts must consider "traditional" stay factors such as likelihood of success on the merits, whether the party seeking a stay will be irreparably injured absent a stay, the injury to the party opposing the stay, and the public interest, when determining whether a stay should be granted. Every other circuit court automatically stayed non-frivolous appeals of a denial of a motion to compel arbitration.

In siding with the majority of the circuit courts, the Court emphasized that its ruling does not create a preference for arbitration, but simply subjects cases involving arbitration to the same principles courts apply in other analogous contexts where interlocutory appeals are authorized. The Court reasoned that a rule providing for an automatic stay makes the most sense because if the district court could move forward with pre-trial and trial proceedings while an appeal was ongoing then many of the benefits of arbitration— including efficiency, cost savings, and less intrusive discovery—would be lost, rendering any reversal of the lower court's decision moot. Especially concerning for the Court was the potential that the party seeking arbitration would be coerced into settling cases to avoid trial court proceedings, particularly in class action cases. Critically, the Court found that the use of the traditional stay factors, which do not consider litigation expenses, does not adequately account for harm to a party's right to arbitration in the event of a denial of stay. The majority recognized the potential that parties might use appeal only to delay proceedings, but noted that there was no evidence that this was commonplace and found that there are methods other than a denial of stay that courts can use to deter the improper use of appeals.

In her dissenting opinion, Justice Ketanji Brown Jackson disagreed that a rule providing for an automatic stay in appeals involving arbitrability does

not create an arbitration preferring rule. In fact, Justice Jackson sharply criticized the Court's majority for "invent[ing] a new stay rule perpetually favoring one class of litigants—defendants seeking arbitration." The dissent further noted that the text of the FAA does not provide for an automatic stay and argued that a rule allowing for an automatic stay would actually impose undue pressure on plaintiffs to settle cases in light of a potentially lengthy appeal.

Takeaway for Employers

The immediate effect of the Court's decision is that employers seeking to enforce arbitration agreements will not be forced to litigate their case while appeal is pending. Thus, employers can rest easy knowing that they will not have to expend significant resources litigating a case at the trial court level while appealing the denial of their motion to compel arbitration. However, given the ever-changing landscape of arbitration, employers should still have their legal counsel periodically review arbitration agreements to ensure that the agreements are up to date and issue new arbitration agreements to employees if necessary. If you need help reviewing your arbitration agreements or have any questions on how the Supreme Court's decision in *Coinbase* will affect your arbitration agreements, contact your Akerman attorney.
