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SCOTUS Releases Unanimous Opinions in Two Arbitration Cases

ONE EXCLUDES TRUCKERS FROM ARBITRATION

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THOMAS P. GODAR
MADISON:
608.234.6064
THOMAS.GODAR@
HUSCHBLACKWELL.COM

In the past two weeks, the U.S. Supreme Court released two unanimous opinions regarding enforcement of arbitration agreements under the Federal Arbitration Act (FAA), *Henry Schein, Inc. v. Archer and White Sales, Inc.*, and *New Prime Inc. v Oliveira*. While both cases addressed the threshold issue of arbitrability of disputes, *New Prime* is the rare SCOTUS decision **refusing** to enforce the terms of an arbitration agreement.

Henry Schein, Inc. v. Archer and White Sales, Inc.

In *Henry Schein* a party sought to compel arbitration of a dispute involving Archer's claims for monetary damages and injunctive relief. The arbitration agreement at issue expressly excluded from arbitration actions seeking injunctive relief, and it incorporated the AAA rules which Henry Schein contended delegated the issue of arbitrability to an arbitrator. Archer claimed the contract "barred" arbitration of disputes seeking injunctive relief and argued a court may decide the issue of arbitrability when the claim of arbitration is "wholly groundless." The District Court and 5th Circuit agreed with Archer and refused to compel arbitration.

The issue before the Court was whether the FAA permits a Court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator if the Court concludes the claim of arbitrability is "wholly groundless." SCOTUS has held that arbitrators are to decide issues of arbitrability so long as a valid contract and a clear and unmistakable delegation provision exist. Yet, some circuit courts have relied on a "wholly groundless" exception to deny a claim of arbitration.

In his first SCOTUS opinion, Justice Kavanaugh wasted no time in striking down the "wholly groundless" exception based on the absence of language in the FAA providing for such an exception. Moreover, Justice Kavanaugh emphasized it was not the role of the Court to judicially create such an exception. He also noted that the utility of a wholly groundless exception was "dubious" and more likely to cause further "collateral litigation." His point is perhaps unassailable upon the realization that this case had been in litigation for over five years. The case was remanded to the 5th Circuit to determine whether a clear and unmistakable delegation of the issue of arbitrability existed under the terms of the agreement.

New Prime Inc., v. Oliveira

In *New Prime*, Oliveira, a truck driver and purported independent contractor of New Prime, a transportation company, brought a class action against New Prime for failure to pay its drivers lawful wages. New Prime sought to compel arbitration under the terms of an arbitration agreement. Oliveira argued that the exclusion in §1 of the FAA exempting "contracts of employment of workers engaged in foreign or interstate commerce" deprived the court of authority to compel arbitration. The District Court and 5th Circuit agreed with Oliveira, as did the U.S. Supreme Court.

The Court's denial of the claim to enforce the arbitration agreement relied on canons of statutory construction using the meaning of words at the time the FAA was enacted. Justice Gorsuch, who wrote the opinion of the Court, immediately established that a court's authority to "compel arbitration" is not unconditional" despite expansive language contained in a private arbitration agreement.

The Court then addressed the nature of the exclusion in §1 of the FAA and held that the term "contracts of employment" in §1 simply refers to agreements to perform work under the ordinary meaning of the text at the time Congress enacted the FAA. Therefore, Oliveira's independent contractor's agreement, indisputably a contract to perform work, was excluded from coverage under the FAA.

What This Means To You

The Supreme Court has strongly supported the enforcement of private arbitration agreements and continues to do so under the *Henry Schein* decision. So long as an arbitration agreement is a valid contract and its delegation provision is clear and unmistakable, the arbitrator decides issues of arbitrability. However, in the *New Prime* decision, the Court identified a narrow, but very significant exception in the transportation industry. Before a court can compel arbitration, the agreement must be consistent with §2 of the FAA and not trigger the exclusion in §1 which applies to transportation industry workers, including independent contractors. Given the U.S. Supreme Court's holdings,

businesses should review their arbitration agreements to ensure the provisions relating to arbitrability are unambiguous and comply with the provisions of the FAA.

Contact Us

If you have questions about the implications of the Court's decisions or seek advice regarding the enforceability of arbitration provisions used in your business, contact your Husch Blackwell attorney or Tom Godar.

Tracey Oakes O'Brien was a contributing author of this content.