

SCOTUS TO REVIEW CRITICAL ARBITRATION CASE: 3 QUESTIONS FOR EMPLOYERS TO CONSIDER

Insights
Dec 30, 2022

Employers that face lawsuits from employees often seek to move such claims from the courthouse to arbitration. But what happens if the trial court refuses to compel arbitration and the employer appeals the decision? Should the litigation continue at the trial court level while the employer asks the appeals court to weigh in? Or should the trial court pause the proceedings until the appellate court makes a decision? The Supreme Court recently agreed to hear a case that asks these questions – and its decision could reshape your approach to workplace litigation. Here are the three key questions for employers to review as you await a SCOTUS ruling in *Coinbase, Inc. v. Bielski*.

1. What Are the Main Issues in the Case?

First, let's discuss the background and issues [in this case](#), which stems from two consumer class actions against Coinbase, a company that operates a cryptocurrency exchange platform. Here's a breakdown of the key developments:

- **Consumers file class actions.** In *Bielski*, a plaintiff who used the Coinbase platform alleges that the company violated the Electronic Funds Transfer Act by failing to investigate or resolve claims that scammers fraudulently accessed consumer accounts and transferred currency. In the other lawsuit, *Suski*, the plaintiffs allege that Coinbase operated an illegal cryptocurrency lottery in violation of California's consumer protection laws.

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- **Company wants to move cases to arbitration.** SCOTUS has not been asked to resolve these underlying issues. Rather, Coinbase sought to compel arbitration of the disputes on an individual — rather than class — basis. The company pointed to a user agreement that included an arbitration clause through which the plaintiffs agreed to individually arbitrate their claims.
- **Courts refuse to pause cases while appeal is pending.** The trial court denied the company's motion to compel arbitration — finding that the agreement was unconscionable because it was too one-sided in favor of the company. Coinbase appealed the order to the 9th U.S. Circuit Court of Appeals and asked the trial court to pause the litigation procedures until the appellate court reached a decision. Both the trial court and the 9th Circuit refused to halt the litigation process during the appeal.
- **Coinbase asks SCOTUS to weigh in.** The company argued that it shouldn't be forced to engage in time-consuming and costly litigation — including class-wide discovery — if the case may ultimately proceed in arbitration. Coinbase argued that the trial court "lacks jurisdiction to proceed with a case while the court of appeals is deciding whether the case belongs in litigation to begin with."
- **Federal appellate courts are divided on the issue.** The 3rd, 4th, 7th, 10th, 11th, and D.C. Circuits have held that the appeal automatically pauses the litigation, while the 2nd, 5th, and 9th Circuits have held that the district court has the discretion to decide on a case-by-case basis whether to proceed with litigation during the appeal. Additionally, California's Arbitration Act would have mandated a stay of proceedings if this issue was being determined by state courts, instead of federal.
- **Plaintiffs raise questions about long delays.** The plaintiffs want the litigation to proceed at the trial-court level while an appeal is pending. They argue that the Federal Arbitration Act's (FAA's) "liberal federal policy favoring arbitration ... only ensures that courts enforce arbitration agreements in the same manner as other contracts." In the employment context, as Bloomberg Law [reported](#), worker advocates fear that an automatic stay during the appeal will harm plaintiffs by dragging out their cases – potentially for years.

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- **Businesses seek efficiency.** On the flipside, businesses don't want to waste time and money on class action litigation in court if the case will ultimately be heard on an individual basis by an arbitrator. They believe this foundational question should be answered at the outset to make the process as efficient as possible.

2. Why Does it Matter to Employers?

Many of the benefits of alternative dispute resolution may be lost if SCOTUS sides with the plaintiffs, even if a case is ultimately moved from the courthouse to an arbitration setting.

Arbitration offers a less-public setting for employers and workers to efficiently resolve sensitive personnel matters. Additionally, arbitration can be faster and less expensive than defending a lawsuit in court. A ruling in favor of the plaintiffs in the *Coinbase* case, however, would give trial courts the discretion to force employers to proceed with costly and public litigation while they also argue their appeal.

The cost and efficiency benefits of arbitration can be especially sizeable in alleged class actions such as these. If an arbitration agreement does not allow for class arbitration, employers and other putative class action defendants can move to compel the case to arbitration on an individual basis, meaning the arbitrator will evaluate only the claims of the named plaintiffs, rather than a full class of plaintiffs. If the underlying litigation is not paused in the trial court while the defendant appeals the denial of a motion to compel arbitration, the defendant may have to engage in costly discovery related to other potential class members. Employers could also face pressure to settle on a class-wide basis while the issue of jurisdiction is still under consideration by the appellate court.

If SCOTUS sides with *Coinbase*, trial courts would be required to halt their proceedings during the appeal. This would allow employers to potentially realize the benefits that arbitration affords.

3. What Should You Do?

The Supreme Court accepted the matter on December 9 but has yet to set a date for oral argument. The court is expected to hear arguments sometime in the next few

months and issue an opinion by the end of the term in June. It is possible that the case gets pushed to the next term, in which case employers will need to wait until the end of 2023 or early 2024 to get a resolution on the matter. In the meantime, Coinbase has yet again requested that the 9th Circuit pause the case pending SCOTUS's answer.

While we await a decision, this case serves as a reminder to employers to review your arbitration agreements, particularly since myriad issues with enforceability can arise under federal, state, and local laws. For example, in the *Coinbase* case, the trial court held that the arbitration agreement was too one-sided in favor of the company, among other issues, and was therefore unenforceable.

Moreover, in February, Congress [passed a law](#) amending the FAA to prohibit employers from unilaterally enforcing arbitration of sexual assault or sexual harassment claims. Additionally, you may have to account for nuances at the state level, particularly in [California](#) where the relevant laws are complex.

All of this highlights the importance of working with your attorney to carefully draft compliant employment agreements.

Conclusion

We will continue to monitor developments related to this case and provide an update after oral argument, so make sure you subscribe to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.