FP SCOTUS Predictions: Divided Court Will Reach Close Decision in Critical Arbitration Case

Insights
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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 decides on arbitrability? The Supreme Court will soon decide whether a trial court's proceedings are automatically paused when a party challenges a judge's decision denying arbitration. Although the case involves consumer arbitration agreements, the impending SCOTUS decision could reshape your approach to workplace litigation. For example, if the Justices decide that trial proceedings *are not* automatically paused pending an appeal, employers could face discovery battles and expensive litigation in the district court while they appeal the question of arbitrability. How will SCOTUS decide? The Justices seemed divided based on their questioning during oral arguments, so we predict it will be a close one. We're spilt, however, on our thoughts about the details and the ultimate ruling. Read on for a summary of the issues in *Coinbase, Inc. v. Bielski*, as well as a debate on how we think it will be decided.

1. What is this Case About?

This case stems from two consumer class actions against Coinbase, a company that operates a cryptocurrency exchange platform. In one case, the plaintiff alleges that the company violated the Electronic Funds Transfer Act, and in the other, the plaintiffs allege that it violated California's consumer protection laws.

SCOTUS has not been asked to resolve these underlying issues. Instead, 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.

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 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.

2. How Could This Impact Employers?

Businesses seeking to compel arbitration are successful in nearly half of all appeals. However, many of the benefits of alternative dispute resolution — such as privacy, lower cost, and more efficiency — may be lost if SCOTUS sides with the plaintiffs, even if a case is ultimately moved from the courthouse to an arbitration setting. Consider the following:

- **Privacy**. Disputes in court are a matter of public record, whereas those in arbitration tend to be more private, at least where the arbitration agreement includes a confidentiality clause. As a result, nearly any proceeding in trial court — including early discovery disputes — could lead to sensitive information and documents leaking to the public.
- **Cost**. Litigation is expensive, and continuing trial litigation while an appeal is pending means costs will accrue faster. This is particularly true with class action claims because an arbitration agreement generally requires parties to arbitrate claims on an individual rather than a class basis. If the trial proceedings aren't paused during the appeal, employers will have to fight class discovery while seeking individual arbitration. Moreover, if the district court authorizes notice to potential class or collective action members, and the appellate court later overturns the district court's order denying arbitration, the "bell" cannot be "un-rung." The plaintiffs' attorneys will have access to significantly more information and a much larger group of employees, which may add pressure to settle the case.
- **Efficiency**. If the employer ultimately prevails on appeal — as roughly half do — the time spent litigating at the trial level may prove to be unnecessary and the benefits of arbitration may be lost.

3. FP SCOTUS Prediction: Decision Will Be Close

Based on our analysis and review of the briefing and oral argument, this case is a close one and our predictions are split as to whether SCOTUS will hold that trial court proceedings are automatically paused when a party appeals an order denying arbitration. What we all agree on, however, is that the decision will address how lower courts should retain some control to reduce the procedural concerns highlighted above.

4. FP Predictions: The Breakdown

- **Matt Korn:** I think this will be a close decision, likely 5-4, reversing the 9th Circuit and finding that trial court proceedings are automatically paused during the appeal. I predict that Justice Kavanaugh will author the majority opinion and Justice Gorsuch will draft a concurrence encouraging appellate courts to expedite the appeal process and minimize any harm resulting from the appeal.

- **George Reeves**: I also predict a close 5-4 opinion, but I think SCOTUS will uphold the lower court's decision not to automatically pause the litigation process during the appeal. I think the majority opinion will be written by Justice Sotomayor. Justice Gorsuch will write a concurring opinion addressing the concerns over delays in the proceedings by suggesting that it should be up to the district courts to manage the discovery and class proceedings while there is an appeal pending.
- **Megan Walker:** I anticipate it will be a 6-3 opinion affirming the 9th Circuit's ruling, with Justice Sotomayor writing for the majority and Chief Justice Roberts penning a concurrence suggesting that district courts may use their discretion to delay discovery or certain class proceedings while an appeal is pending and that litigants may request expedited appeals to minimize the overlap.

5. What Should You Do in the Meantime?

The Supreme Court heard oral argument on March 21 and is expected to issue an opinion by the end of the term in June. 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.

Moreover, in February 2022, Congress passed a law amending the Federal Arbitration Act (FAA) to prohibit employers from unilaterally enforcing arbitration agreements for claims of sexual assault or sexual harassment.

Additionally, you may have to account for nuances at the state level, particularly in California where the relevant laws are complex. The decision in this case may impact your litigation strategy in states like California where there is a statutory stay pending appeal (as well as statutory exceptions, of course).

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 when SCOTUS issues an opinion, 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.

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