

US Supreme Court Reverses Fifth Circuit, Gives Arbitrators More Power to Determine Arbitrability

The Supreme Court of the United States recently reversed a ruling by the Fifth Circuit Court of Appeals and held that a contract's terms are controlling in determining who has the authority to decide whether a claim is subject to arbitration. In so doing, the Court dispensed with the "wholly groundless" exception to the general rule that courts must enforce contracts that delegate arbitrability determinations to an arbitrator rather than a court, reinforcing its adherence to the express terms of arbitration agreements.

In *Henry Schein, Inc., et al. v. Archer & White Sales, Inc.*, the Supreme Court vacated the lower courts' denial of the petitioner's motion to compel arbitration. Although the terms of the contract provided the arbitrator with the authority to determine the arbitrability of claims, the district court relied on Fifth Circuit precedent to deny the motion because the petitioner's arguments for arbitration were "wholly groundless."

Before the Supreme Court's unanimous opinion, the various courts of appeals were divided as to the existence of the "wholly groundless" exception. The exception allows courts to ignore contractual provisions delegating the authority to determine threshold inquiries of arbitrability to the arbitrator when the arguments for arbitration are "wholly groundless." The Court concluded that the "wholly groundless" exception is inconsistent with both the text of the Federal Arbitration Act and Supreme Court precedent. It stated:

"We must interpret the Act as written, and the Act in turn requires that we interpret the contract as written. When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless."

The Court rejected a number of arguments advanced by the respondent, including that the "wholly groundless" exception is necessary to efficiently dispose of meritless and frivolous motions to compel arbitration. Among other reasons, it held that courts may not rewrite the text of a statute to address perceived policy concerns. The Federal Arbitration Act does not recognize the "wholly groundless" exception and courts may not bypass the parties' bargained-for agreement on the basis of this nonexistent exception.

This means that, as a practical matter, courts are more likely than ever to dismiss disputes over the arbitrability of claims in favor of arbitration and arbitrators, rather than courts, will determine the threshold inquiry of arbitrability.

In addition to annulling the "wholly groundless" exception, the Supreme Court's opinion in *Henry Schein* signals its adherence to the express terms of an arbitration agreement. The Court emphasized that arbitration is a matter of contract and that courts must enforce arbitration agreements as written. As long as a valid arbitration agreement exists, courts may not supplant the express terms of that agreement with their own views – even if there may be policy considerations for so doing. Such deference to contractual terms may, therefore, have broader implications beyond those at issue in *Henry Schein*.

In light of the Supreme Court's opinion, it is more important now than ever to review your arbitration agreements to ensure that your agreements are up to date. We have seasoned and experienced regulatory, litigation and policy lawyers who can ensure that the terms of your arbitration agreements are best suited to accomplish your goals and effective in reducing litigation costs.

Contacts

Greg R. Wehrer

Partner, Houston
T +1 713 546 5841
E greg.wehrer@squirepb.com

Amanda D. Price

Senior Associate, Houston
T +1 713 546 5838
E amanda.price@squirepb.com

Shing C. Tse

Associate, Houston
T +1 713 546 3336
E shing.tse@squirepb.com