

Supreme Court to Hear Case on Whether Lawsuits are Stayed During Appeal of Denial of Motion to Compel Arbitration

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On December 9, 2022, the Supreme Court of the United States granted a petition for certiorari in a case raising the question of whether a non-frivolous appeal to the denial of a motion to compel arbitration strips the district court of jurisdiction of a case and therefore puts the case on hold. The case, [*Coinbase v. Bielski*](#), seeks to answer a circuit split after two petitions filed last year on the issue were withdrawn because the parties agreed to voluntary stays.

The petition arises from two cases in which the district court refused to compel arbitration. In both cases, the district court and the U.S. Court of Appeals for the Ninth Circuit refused to stay the litigation while the company appealed the denial of its motion to compel arbitration. The rulings thus forced the company to defend the claims against it in the lawsuits while pursuing interlocutory appeals over whether the claims should be in court or arbitration.

Section 16(a) of the Federal Arbitration Act (FAA) provides that when a district court denies a motion to compel arbitration, the party seeking arbitration may immediately file an interlocutory appeal. However, a circuit split exists over whether the district court retains jurisdiction or the appeal requires the district court proceedings to be stayed until the appeal is resolved.

Six circuits (the Third, Fourth, Seventh, Eleventh, and D.C. Circuits) have held a district court lacks jurisdiction once an appeal is filed, while three circuits (the Second, Fifth, and Ninth Circuits) have held district courts retain jurisdiction to continue the litigation and the party seeking arbitration must request a discretionary stay.

Key Takeaways

The Supreme Court appears poised to answer an important question: whether the FAA requires that lawsuits be stayed while a party pursues an appeal over whether the claims should be in arbitration. Forcing parties seeking arbitration to request a discretionary stay and/or defend in court claims that are subject to arbitration while an appeal seeking to compel arbitration is both costly and burdensome. The Supreme Court now will decide whether the FAA permits such “dual track” proceedings.

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