

## Litigation + Dispute Resolution

# Stay, Stay, Stay – The Supreme Court Rules Litigation is Automatically Stayed Pending an Appeal on Arbitrability

### The Bottom Line

- The U.S. Supreme Court rules that lower court proceedings must be put on hold while an appeal is pending over whether the matter should be arbitrated.
- Businesses that regularly include arbitration clauses in agreements will no longer be forced to continue litigating cases while an appeal on arbitrability is pending.
- This decision is particularly relevant in large putative class actions in which the threat of looming, expensive discovery during an appeal on arbitrability can plague defendants.

When an appeal is pending over whether a case should be arbitrated instead of litigated in court, the court proceedings must be halted for the duration of the appeal, the U.S. Supreme Court recently held.

The 5-4 ruling in [Coinbase, Inc. v. Bielski](#) is a win for businesses that regularly include arbitration clauses in their agreements. The decision is also relevant in large, putative class actions where discovery costs can quickly add up during an appeal. Relatedly, it is expected that the holding will reduce the prevalence of coerced settlements entered into to avoid the expense of discovery during an appeal.

### The Coinbase Class Action

The Court's June 23, 2023, decision that litigation is automatically stayed pending an appeal on arbitrability was penned by Justice Brett Kavanaugh, who wrote that the decision is a "common practice [that] reflects common sense." The ruling in *Coinbase, Inc. v. Bielski* settles a circuit court split. The Ninth Circuit, where the *Coinbase* case was proceeding, and two other courts have held that the stay ruling should be left to the trial judges' discretion while six other circuits granted stays automatically.

The putative class action case was filed in the U.S. District Court for the Northern District of California on behalf of Coinbase users who alleged that Coinbase, a cryptocurrency platform, failed to replace funds that were

fraudulently taken from their accounts. As Coinbase's User Agreement explicitly provides for dispute resolution through binding arbitration, Coinbase filed a motion to compel arbitration of the individual claims. The district court denied Coinbase's motion and Coinbase filed an interlocutory appeal. Additionally, Coinbase made a motion to stay, or halt, the litigation pending its appeal. The district court denied the stay and the Ninth Circuit similarly rejected the stay pending appeal.

The Federal Arbitration Act (FAA), which governs arbitration agreements, provides that a party may take an interlocutory appeal from the denial of its motion to compel arbitration. While Title 9, Section 16(a) of the Act does not explicitly stay district court proceedings, Congress enacted it against a background principle, known as the divestiture rule, that an appeal "divests the district court of its control over those aspects of the case involved in the appeal." Relying on that principle and finding that "the entire case is essentially 'involved in the appeal,'" the majority of the Supreme Court ruled in Coinbase's favor: "[t]he sole question before this Court is whether a district court must stay its proceedings while the interlocutory appeal on arbitrability is ongoing. The answer is yes."

### **The Impact of Halting Litigation Pending an Arbitrability Appeal**

With its decision, SCOTUS gave credence to the view held by the majority of appellate courts and explained that an opposite view would mean that many of the benefits of arbitration, such as efficiency, lower costs and less intrusive discovery, would be "irretrievably lost" – even if the case eventually ended up in arbitration. SCOTUS also cited the concern that parties would be forced to settle to avoid burdensome discovery or even trial – aspects which they specifically contracted to avoid.

"A right to interlocutory appeal of the arbitrability issue without an automatic stay of the district court proceedings is therefore like a lock without a key, a bat without a ball, a computer without a keyboard – in other words, not especially sensible," Kavanaugh wrote.

The decision is particularly relevant in large putative class actions in which the threat of looming, expensive discovery during an appeal on arbitrability plagues defendants because defendants often look to arbitrate individual claims, rather than litigate a class action in district court. It also explicitly seeks to avoid coercion into "blackmail settlements," extracted to avoid the expense of discovery pending appeal or to avoid the threat of potentially exorbitant statutory or other damages when multiplied in the class action context. The holding also aims to stop the wasting of scarce judicial resources – outcomes that are even more detrimental for parties and courts that are forced to continue to litigate disputes that ultimately end up in arbitration after an appeal.

It's also worth noting that the Ninth Circuit is a popular forum for putative class actions, at least in part due to its minority view on the stay issue. So, this ruling may make a difference in where cases are brought, as the districts will all now treat this issue the same.

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### **For More Information**

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