KLEIN THOMAS LEE & FRESARD

June 26, 2023

U.S. SUPREME COURT CONFIRMS THAT ARBITRABILITY APPEALS AUTOMATICALLY STAY DISTRICT COURT LITIGATION

To Our Clients and Friends:

Last Friday, the U.S. Supreme Court held in a 5-4 decision that district court litigation is automatically stayed when a party appeals an order denying a motion to compel arbitration. *See Coinbase, Inc. v. Bielski*, 599 U.S. __ (2023). The decision has significant implications for class action litigation, gives defendants that have lost a motion to compel arbitration a way to freeze discovery before it begins, and provides leverage to class action defendants in early settlement talks.

The case involves 9 U.S.C. § 16(a), which allows interlocutory appeals of orders denying a motion to compel arbitration. The statute does not say whether the district court must stay proceedings pending the interlocutory appeal. Before *Coinbase*, six circuit courts granted such stays automatically, but three other circuit courts said stays are a matter of district court discretion.

Writing for the majority, Justice Kavanaugh explained that "common sense" required an automatic stay pending a § 16(a) appeal. *Id.*, Slip Op. at 5. He reasoned that any appeal—including an interlocutory appeal—"'divests the district court of its control over those aspects of the case involved in the appeal,'" and an interlocutory appeal of an order denying a motion to compel arbitration puts "the entire case" on appeal. *Id.* at 9 (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). Thus, "it 'makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one.'" *Id.* at 4 (quoting *Apostol v. Gallion*, 870 F. 2d 1665, 1338 (7th Cir. 1989)). Concluding otherwise would mean that "Congress's decision in § 16(a) to afford a right to an interlocutory appeal would be largely nullified," as "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost." *Id.* at 6.

Coinbase confirms that § 16(a) gives defendants a powerful procedural tool to protect their arbitration rights and avoid the burdens of discovery while appealing an arbitrability dispute. An automatic stay pending appeal also might help defendants settle putative class actions before discovery. In fact, that outcome is exactly what Justice Jackson lamented in her *Coinbase* dissent. She argued that the Court's ruling is likely to "impose settlement pressure" on class action plaintiffs because "any interlocutory appeal on a dispositive issue grinds the plaintiff's case to a halt" and increases the costs and risks of continued litigation. *Id.* at 14 (Jackson, J., dissenting).

This decision is particularly significant to automakers and other manufacturers that have increasingly turned to arbitration as a tool for defending against a steady wave of class action lawsuits. *See, e.g.*, *Riley v. General Motors LLC,* 2023 U.S. Dist. LEXIS 79829 (M.D. Fla. Mar. 28, 2023); *Lyman v. Ford Motor Co.*, 2023 U.S. Dist. LEXIS 52875 (E.D. Mich. Mar. 28, 2023).

Now, if a district court refuses a request to compel arbitration, the defendant manufacturer can immediately appeal the decision and stay proceedings in the district court before incurring the time and expense of discovery. Although *Coinbase* did not squarely address what happens when a defendant seeks to compel only *some* class plaintiffs to arbitration, the decision will support arguments that at least part of—if not all—trial court proceedings must be stayed while the circuit court weighs in on any threshold arbitrability disputes.

Based on the *Coinbase* ruling and the growing number of cases involving arbitrability disputes,[1] we anticipate an increased amount of appellate activity in this area. In the long run, more appeals will mean more guidance for litigants and trial courts about what types of arbitration agreements are enforceable. Companies that routinely seek to enforce arbitration agreements should view *Coinbase* an opportunity to develop the law in this area and challenge trial court arbitrability doctrines that, until now, might have evaded appellate review.

* * *

Our lawyers are happy to address any questions you might have regarding this legal development. Please feel free to contact the KTLF lawyers with whom you usually work or the following authors:

Brandon L. Boxler (Richmond, Virginia): brandon.boxler@kleinthomaslaw.com
Ian K. Edwards (Detroit, Michigan): ian.edwards@kleinthomaslaw.com

[1] Our lawyers analyzed this legal trend in a recent *Law360* article. *See* Ellisse Thompson and Brandon Boxler, *Dissecting the Case Law on Automaker Arbitration Provisions*, Law360.com (May 25, 2023), https://www.law360.com/articles/1680982/dissecting-the-case-law-on-automaker-arbitration-provisions.