CLIENT ALERT

U.S. Supreme Court Bars Trucking Company from Enforcing Mandatory Arbitration Agreement with Independent Contractor

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On January 15, 2019, the U.S. Supreme Court, in *New Prime, Inc. v. Oliveira,* No. 17-340, 2019 WL 189342 (January 15, 2019), held unanimously that a court, not an arbitrator, must decide whether an arbitration agreement signed by a truck driver is covered by the Federal Arbitration Act (FAA), and that the lower courts were correct in concluding that the FAA does not apply to his agreement. The Court also held that the FAA's exclusion of contracts covering "workers" in interstate commerce extends to agreements covering individuals designated as independent contractors.

The decision is a win for many transportation industry workers who will now be able to pursue employment law claims in court. And the decision includes an interesting discussion about how courts should interpret "delegation clauses" in arbitration agreements. That discussion highlights the ongoing lack of clarity as to the recurring question of whether a court or an arbitrator should decide disputes involving arbitrability.

Background

The plaintiff in *New Prime* was an over-the-road driver for a trucking company, who worked under an agreement that characterized him as an independent contractor. His agreement required that all disputes between the parties must be submitted to arbitration. He filed a federal and state wage and hour class action against the company, alleging that he, and the proposed class, should be classified as employees, and that the company had violated relevant minimum wage and overtime payment requirements applicable to employees. The company sought to compel arbitration, arguing, among other things, that the delegation clause in the parties' agreement provided that the arbitrator, and not a court, should resolve the question of whether the claim was subject to arbitration.

Both the district court and the First Circuit disagreed with the trucking company and declined to order arbitration. The First Circuit held that a court, and not an arbitrator, must decide the threshold question of whether the parties' agreement was exempt from the FAA under the statute's exclusion of contracts of employment for any "class of workers engaged in foreign or interstate commerce." The appellate court also held that the parties' characterization of their relationship as an independent contractor was immaterial to the question of whether the agreement was exempt from the FAA.

The Court's Decision

The Court Must Decide the Initial Question of Arbitrability

The Supreme Court unanimously affirmed the First Circuit's decision. Justice Gorsuch endorsed the appellate court's reasoning and result on both questions.

Justice Gorsuch began his analysis by observing that the FAA "doesn't extend to *all* private agreements, no matter how emphatically they may express a preference for arbitration." *Slip op. at 3.* He then concluded that Section 1 of the FAA was an "antecedent statutory provision" that limits the authority of federal courts to compel arbitration under the statute. The Court agreed with the First Circuit that a court "should decide for itself" whether the exclusion in Section 1 of the FAA of contracts of employment of "workers engaged in foreign or interstate commerce" applied to the agreement at issue. *Slip op. at* 3. Justice Gorsuch rejected the trucking company's argument that the delegation clause in the parties' agreement required this issue to be resolved by an arbitrator. Characterizing a delegation clause as "merely a specialized type of arbitration agreement," the Court concluded that courts have no authority under the FAA to enforce such a clause in an agreement that is excluded from FAA coverage. *Slip op.* at 4.

The FAA Exception is Extended to Independent Contractor Agreements

The Court's second holding, that the FAA exclusion extended to an agreement with a worker characterized as an independent contractor, includes a delightful discussion (for readers interested in such things) of the etymology of the words "worker" and "employee." Justice Gorsuch's opinion concludes that the contemporaneous understanding, in 1925 when the FAA was enacted, of the term "worker" was not limited to individuals who might be classified today as "employees." The Court's conclusion on this point was predictable following oral argument in the case in October, where both Chief Justice Roberts and Justice Gorsuch seemed to agree with Justice Sotomayor that the statute's use of the term "worker" must be interpreted according to common usage, to include people who work for someone else, irrespective of whether they are designated as employees or independent contractors.

Implications for Employers

New Prime has significant immediate ramifications for transportation industry employers, which are now unlikely to be able to require many categories of individuals to arbitrate employment disputes. Both parties in the case agreed that the truck driver plaintiff qualified as a "worker engaged in foreign or interstate commerce" within the meaning of Section 1 of the FAA. So the Court's opinion provides no clarification as to whether particular categories of individuals would also be viewed as "workers" and thus excluded from the FAA.

Unfortunately, the Court's decision provides little guidance as to the interpretation of "delegation clauses." Justice Gorsuch wrote that an agreement "may be crystal clear and require arbitration of every question under the sun, but that does not necessarily mean the Act authorizes a court to stay litigation and send the parties to an arbitral forum." *Slip op.* at 4. The *New Prime* opinion says little more about what is commonly known as the "who decides" question, evident in various kinds of disputes regarding the proper forum for resolving questions of arbitrability. Last week's Supreme Court decision in *Henry Schein, Inc. v. Archer and White Sales, Inc.*, (which was previously written about here) likewise failed to clarify the circumstances in which the Court is likely to find that contracting parties have been sufficiently clear in addressing this issue in their agreements. Additional clarity on this important point will have to await subsequent cases.

Finally, the Court's decision may have important consequences beyond the transportation industry. The Court's review of the linguistic history of the words "employee" and "worker" is likely to generate litigation under other federal and state employment law statutes containing similar definitional terms.

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