

# SCOTUS Removes Burden Handicapping Appeals Seeking Arbitration

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The U.S. Supreme Court's June 2023 decision in *Coinbase Inc. v. Bielski* requires that district court litigation in any matter remain in the starting gate while any appeal from a denial of a motion to compel arbitration in that matter runs its course. This will make arbitration a much more frequent winner in the sweepstakes for choosing the conflict resolution venue. Many consumer financial products and services agreements include an arbitration clause allowing parties to require that disputes be resolved through arbitration instead of the court system. Class actions are generally precluded. While arbitration clauses are disfavored by consumer advocacy groups, they are an effective tool for stemming costly class actions when used properly. In *Coinbase*, the plaintiff alleged that the online currency platform didn't replace funds fraudulently taken from users' accounts. Coinbase filed a motion to compel arbitration, relying on the arbitration provision in its user agreement. The district court denied the motion. Coinbase then filed an interlocutory appeal to the Ninth Circuit Court of Appeals under the Federal Arbitration Act, which expressly authorizes an interlocutory appeal from the denial of a motion to compel arbitration. Coinbase simultaneously moved the district court to stay all proceedings pending the resolution of the interlocutory appeal. Coinbase's request for a stay was denied by both the district and appellate court. Ninth Circuit precedent provided that such a stay is not automatic but may instead be granted at the trial court's discretion. The Supreme Court, drawing a card from *Griggs v. Provident Consumer Discount Co.*, maintained that an appeal, including an interlocutory appeal, divests the district court of its control over those aspects of the case involved in the appeal. Because the question on appeal is whether the case belongs in arbitration or instead in the district court, the entire case is essentially "involved in the appeal." As such, the court concluded that an automatic stay during the pendency of an arbitrability appeal was necessary. In further support, the court reasoned that "it makes no sense for trial to go forward while the court of appeals cogitates on whether there should be one." Among other things, the court noted that lower courts possess robust tools to prevent unwarranted delay and deter frivolous conduct that an automatic stay might encourage. It also found that the discretionary factors considered by courts in the Ninth Circuit, including irreparable injury absent a

stay, were insufficient to protect parties' rights during an interlocutory appeal addressing arbitrability — even substantial and non-recoupable litigation expense. The court distinguished its holding in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.* to the effect that questions of arbitrability are severable from the merits of the underlying disputes, noting that here, by contrast, the issue was more broadly whether a court's authority to consider a case was "involved in the appeal" when the appellate court is considering an issue of arbitrability. The court's decision aligns with decades of legislative and judicial support for alternative dispute resolution and arbitration agreements, and the concomitant growth in the use of arbitration domestically and around the world, particularly in the context of commercial disputes. As the court recognized in *Coinbase*: "Absent an automatic stay ... [the] right to an interlocutory appeal would be largely nullified ... [i]f the district court could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing." Indeed, "many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost ... if the court of appeals later concluded that the case actually had belonged in arbitration all along." The Supreme Court decision aligns the circuits, offering uniformity on long-debated arbitrability issues, and represents a victory for the financial services industry, which relies significantly on arbitration clauses.

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