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U.S. Supreme Court rules that interlocutory appeals of denials of motions to compel arbitration automatically stay trial court proceedings, but opens the door to attacks on such appeals for being "frivolous"

Takeaway: The U.S. Supreme Court recently settled a circuit split by ruling that proceedings in a district court are automatically stayed when a party seeks an interlocutory appeal of a district court's denial of a motion to compel arbitration. *Coinbase, Inc. v. Bielski*, 599 U.S. ----, No. 22-105, 2023 WL 4138983 (June 23, 2023). In a 5-4 decision, the Supreme Court reversed the Ninth Circuit, one of three circuit courts that gave the district court discretion to decide whether to stay proceedings subject to such an appeal. The Supreme Court endorsed the view of the other circuits that such stays are automatically granted.

As discussed in a prior blog post, to control litigation risk, many businesses include an arbitration clause and class action waiver in their consumer-facing terms and conditions. When a consumer files a putative class action against a business and the business can prove that the consumer has assented to the clause, the clause should be enforced by a trial court, effectively terminating the litigation and forcing the consumer to arbitrate his or her claims on an individual basis. Now, if a federal district court denies a motion to compel arbitration and the moving party files an appeal, further trial court proceedings will be automatically stayed without the need (or expense) of a motion to stay proceedings.

Justice Brett Kavanaugh authored the majority opinion and noted "[i]f the district court could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing, then many of the asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost—even if the court of appeals later concluded that the case actually had belonged in arbitration all along." *Bielski*, 2023 WL 4138983, at *4.

Justice Ketanji Brown Jackson's dissenting opinion took issue with removing a discretionary power from district court judges, noting that the Federal Arbitration Act does not expressly mandate automatic stays. *See id.* at *8 (Jackson, J., dissenting) ("I see no basis here for wresting away the discretion traditionally entrusted to the judge closest to a case."). Justices Sonia Sotomayor and Elena Kagan joined Jackson's dissent in its entirety, while Justice Clarence Thomas joined in certain parts of the dissent.

A business faced with a district court denying a motion to compel arbitration will now benefit from an automatic stay pending appeal, thereby avoiding the time and expense of litigating in both the district court and appellate court at the same time. Nevertheless, in rejecting the argument that an automatic stay would encourage frivolous appeals, the Bielski *decision identified other steps aggressive class action plaintiffs' counsel could take to promptly terminate meritless appeals, including asking the*

appellate court "to summarily affirm, to expedite an interlocutory appeal, or to dismiss the interlocutory appeal as frivolous." *Id.* at *5. Businesses appealing denials of motions to compel arbitration may see these types of appellate filings or similar filings in the district court, *see id.* (also noting that many circuits allow district courts to certify interlocutory appeals as "frivolous"), in the wake of the new automatic stay rule.