

PUBLICATION

When Appealing Denial of Motion to Compel Arbitration, Supreme Court Removes Possibility That Parties May Have to Engage in Simultaneous Discovery

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Parties generally have no right to appeal a trial court's decision on pretrial motions until the court issues a final judgment — yet Congress granted that right for decisions that deny a motion to compel arbitration under the Federal Arbitration Act. In a June 23, 2023, decision in *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915 (2023), the Supreme Court now holds that parties participating in such an appeal do not have to simultaneously litigate the case at the district court level. This decision clears the way for companies to use their resources to enforce their arbitration agreements.

Companies choose to include arbitration provisions in their contracts for various reasons, including cost, efficiency, and — when coupled with a confidentiality provision — privacy. When a company gets sued under a contract that includes an arbitration provision, the first step is often determining whether the arbitration provision applies and how to enforce that provision. If the company loses the motion to compel arbitration, it must decide whether to appeal that decision if the right to appeal exists under federal or state law.

The Federal Arbitration Act, which applies to arbitration provisions in contracts that affect interstate commerce in both state and federal courts, makes arbitration provisions enforceable in nearly all circumstances, absent fraud, undue duress, unconscionability, or other rarely used state law contractual defenses. If a judge denies a motion to compel arbitration, the losing party has the right to an immediate appeal of that decision. This right to appeal provides an incentive for companies to enforce their arbitration provisions, while removing the insulation from appeal that other pretrial orders enjoy.

If a party loses a motion to compel arbitration, part of the calculus for whether to appeal includes whether arbitration would save the party time or money. Until last month, district courts in several states had discretion for whether to stay proceedings during an appeal. When a federal district court denies a motion to stay proceedings, the parties must begin to engage in burdensome discovery, negating some of the advantages of including an arbitration provision in the contract. This added cost and loss of efficiency reduces the incentives for companies to attempt to enforce their arbitration provisions through an appeal.

In *Coinbase, Inc. v. Bielski*, the Supreme Court overruled the Fifth and Ninth Circuits and decided in a 5-4 decision that the district court proceedings are automatically stayed during the appeal. The Supreme Court held that because the "question on appeal is whether the case belongs in arbitration or instead in the district court," there is "no sense for trial to go forward while the court of appeals cogitates on whether there should be one." Now, if a company moves to compel arbitration, its motion is denied, and if it decides to appeal, it will no longer be required to proceed through costly discovery while also litigating the appeal. The court will first decide which forum must decide the dispute, and then the case will proceed through discovery and a trial.

There are still significant outstanding questions, such as whether a district court must stay discovery while the initial motion to compel arbitration is pending and how this decision affects motions to compel arbitration in actions pending in state courts. For help with enforcing your arbitration provision or appealing an order

declining to enforce your provision, contact [Ryan Loofbourrow](#) or any member of Baker Donelson's [Appellate](#) or [Business Litigation](#) teams.