# A Trio of Arbitration Cases: Clarifying the Scope of the Federal Arbitration Act*

***By Ben A. West, Partner, Frost Brown Todd LLP, Dallas, Texas and J. Austin Hatfield, Associate, Frost Brown Todd LLP, Louisville, Kentucky***

*Bissonnette v. LePage Bakeries Park St.,* LLC, 144 S. Ct. 905 (Apr. 12, 2024)

*Smith v. Spirizzi,* 144 S. Ct. 1173 (May 16, 2024)

*Coinbase, Inc. v. Suski,* 144 S. Ct. 1186 (May 23, 2024)

Nearly 100 years ago, the Federal Arbitration Act (FAA) was enacted on the straightforward principle that "arbitration agreements are enforceable." Since its enactment, the meaning and scope of the FAA continues to evolve. Fortunately for parties and practitioners who regularly find themselves compelled to arbitrate, the U.S. Supreme Court issued a trio of helpful opinions in its 2023-24 Term.

These opinions were all unanimous and short (10 pages or fewer). The common thread among them was the Supreme Court's focus on the plain text of the FAA and its rejection of legal tests regarding arbitration that are not based in statutory language.

## *Bissonnette v. LePage Bakeries Park St., LLC,* 144 S. Ct. 905 (Apr. 12, 2024).

In *Bissonnette v. LePage Bakeries Park Street, LLC,* two distributors for a nationwide bakery sued the bakery, claiming violations of state and federal wage laws. The distributors were franchisees, both of whom purchased the rights to distribute the bakery's products in specific geographic territories. The franchising agreements contained arbitration provisions.

When the distributors filed suit, the bakery moved to dismiss the distributors' lawsuit and compel arbitration. Under Section 1 of the FAA, however, "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" are exempt from the FAA. The Supreme Court has interpreted this exemption as applying to "transportation workers." The distributors argued that they fell within this exemption and thus should not be compelled to arbitrate.

Citing authority from the U.S. Court of Appeals for the Second Circuit, the bakery argued that the distributors were not covered by the exemption because they were not "transportation workers" engaged in the "transportation industry." The bakery relied on the "much broader scope of responsibility" contemplated under the distributor agreements, which required the distributors not only to collect and distribute the bakery items, but also to identify new retail outlets, advertise the goods, set up promotional displays, stock shelves, replace expired products, and maintain customers' inventories through new orders. Citing these additional duties, the district court agreed with the bakery and compelled arbitration; the Second Circuit affirmed, holding that the distributors were "in the bakery industry" and so were not exempt under Section 1.

In a unanimous opinion authored by Chief Justice Roberts, the Supreme Court reversed, holding that Section 1 requires only that employees be "transportation workers," not that they work in the "transportation industry." The Court relied on its recent opinion in *Southwest Airlines Co. v. Saxon,* 596 U.S. 450 (2022), where it held that for purposes of Section 1, workers are defined "based on what a worker does for an employer, 'not what [the employer] does generally.'"

In doing so, the Supreme Court rejected the Second Circuit's focus on the nature of the industry itself. In the Court's view, this test had been "fashioned ...without any guide in the text of § 1 or [Supreme Court] precedents," and "would often turn on arcane riddles about the nature of a company's services." The Supreme Court also noted that the practical implication of adding an "industry" requirement would be to require extensive discovery and even a mini-trial for every motion to compel arbitration. Attaching such a complex hurdle to motions to compel would conflict with the FAA's stated purpose of avoiding litigation.

***Key Takeaways:***

- Under Section 1 of the FAA, employees who are considered "transportation workers"

are exempt from arbitration agreements in their employment contracts, regardless of whether the businesses the employees work for are in the "transportation industry."

- Vertically integrated businesses selling goods in interstate commerce may have some employees who are exempt from arbitration, even if the business itself is not in what would be considered the "transportation industry."
- The class of workers constituting "transportation workers" who are exempt from arbitration should not substantially increase due to this holding. The Supreme Court noted that to qualify as a "transportation worker," the employee "must at least play a direct and 'necessary role in the free flow of goods' across borders." It is not sufficient for the employee merely to "load or unload goods" that may have moved in interstate commerce.

### *Smith v. Spizzirri,* 144 S. Ct. 1173 (May 16, 2024).

In *Smith v. Spizziri,* delivery drivers sued their former employer in state court for violations of federal and state employment laws. After removing the case to federal court, the employer moved to compel arbitration and dismiss the suit without prejudice. The delivery drivers conceded that their claims were arbitrable but requested the district court to stay the suit rather than dismiss it entirely. The district court chose to dismiss the suit without prejudice, citing Ninth Circuit precedent. The Ninth Circuit affirmed, relying on the court's inherent power to dismiss inactive suits without prejudice.

In a unanimous opinion authored by Justice Sotomayor, the Supreme Court reversed. Under Section 3 of the FAA,when a suit is subject to arbitration, a court "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement[.]" Relying on Section 3's mandatory language, the Supreme Court held that the use of the word "shall" created an "obligation impervious to judicial discretion," and thus a stay, rather than dismissal, is required.

The Court reasoned that the plain meaning of the statute's language expressly "overrides any discretion a district court might otherwise have had to dismiss a suit when the parties have agreed to arbitration." The imposition of a stay rather than dismissal also "comports with the supervisory role that the FAA envisions for the courts," allowing for the parties to return to court for assistance with arbitration-related matters, such as appointing an arbitrator, issuing subpoenas, and enforcing an arbitration award.

***Key Takeaways:***

- Under Section 3 of the FAA, when a case is subject to arbitration and a party requests a stay of trial pending that arbitration, the district court must issue the stay and lacks discretion to simply dismiss the case. But this mandatory language is applicable only when a party requests a stay.
- The Supreme Court acknowledged that district courts still retain authority to dismiss arbitration-related suits "if there is a separate reason to dismiss, unrelated to the fact that an issue in the case is subject to arbitration," such as a lack of jurisdiction.
- Requesting a stay allows the parties' arbitration to continue under the district court's supervision, providing them with a "return ticket" to federal court if arbitration "breaks down or fails to resolve the dispute."
- This ruling may promote efficiency at arbitration. For example, if parties have already expended resources on necessary tasks, such as issuing subpoenas or enforcing an arbitration award, returning a case to federal court may eliminate the cost and complications of having to file a new lawsuit should the need arise.

### *Coinbase Inc. v. Suski,* 144 S. Ct. 1186 (May 23, 2024).

In *Coinbase Inc. v. Suski,* users of a cryptocurrency exchange, Coinbase, sued the exchange for issuing an unlawful cryptocurrency sweepstakes. A group of users filed a class-action complaint, alleging that the sweepstakes violated state and federal consumer-protection laws.

After suit was filed, Coinbase moved to compel arbitration under its Coinbase User Agreement, which all users were required to agree to upon join-

ing the exchange. The User Agreement included an arbitration agreement, which also included a delegation clause stating that an arbitrator, not the court, must determine whether a given dispute is subject to arbitration under the User Agreement's arbitration agreement. The users, however, sought to remain in court by relying on the Official Rules of the sweepstakes, which did not include an arbitration agreement but instead included a forum-selection clause, granting jurisdiction to California courts for disputes related to the sweepstakes.

The district court denied Coinbase's motion to compel, reasoning that the court must decide which contract—the User Agreement with an arbitration and delegation agreement or the Official Rules with a forum-selection clause—governed the users' dispute. The Ninth Circuit affirmed.

In an opinion authored by Justice Jackson, the (once again) unanimous Supreme Court affirmed, holding that the question of whether a subsequent contract between the same parties supersedes an earlier arbitration agreement containing a delegation clause is a question for the court, not the arbitrator. Recognizing the fundamental principle that arbitration is a matter of consent, the Court stated that the first question in every arbitration dispute is "what have these parties agreed to?" In answering that question, the Court recognized that parties could enter two types of agreements concerning arbitration.

The parties may enter into an arbitration agreement, proper, which is an agreement to send the merits of certain disputes to arbitration, i.e., disputes arising out of a certain contract. The parties may also enter into an "antecedent" delegation agreement, which is another type of arbitration agreement. Under an antecedent agreement, an arbitrator, rather than a court, must determine whether a dispute goes to arbitration in the first place, i.e., an arbitrator must determine whether a certain dispute is governed by the arbitration agreement itself.

Based on these two types of arbitration agreements, the Court recognized that parties usually have three types of arbitration-related contests. First, the parties could have a contest over the *merits* of the underlying dispute, e.g., whether one party breached a contract. Second, the parties could have a contest over whether the parties agreed to *arbitrate* the merits of that dispute (a so-called "arbitrability" contest), *e.g.,* whether the breach-of-contract claim is governed by the arbitration agreement. And third, the parties could have a contest over *who* decides the second question, *e.g.,* whether the court or an arbitrator decides whether the breach-of-contract claim is governed by the arbitration agreement.

In *Coinbase,* the Court was presented with a new, fourth dispute: who decides the third contest when the parties entered into multiple agreements that conflict on the answer of who decides arbitrability. The Court held that the only way to resolve this fourth dispute is by determining which contract—and accompanying arbitration-related agreements or lack thereof—applies. By homing in on the conflict between the delegation clause in the User Agreement and forum-selection clause in the Official Rules, the Court concluded that the fourth-level dispute reverts to the original question of whether the parties agreed to send the dispute to arbitration in the first place—with the dispute being whether the court or an arbitrator decides that a dispute is subject to arbitration.

The Court ruled that *this* question has always gone to the court because arbitration—including arbitration merely to determine arbitrability—has always been a matter of the parties' consent, which the court must determine. The Court recognized that the FAA does not allow courts to presume that parties entered into an arbitration agreement, including a delegation agreement. So, where the parties had entered two contracts, with only the first including a delegation agreement that sends arbitrability disputes to an arbitrator, the court must decide whether the parties intended that delegation agreement to continue governing after the second contract. Framed that way, the dispute in *Coinbase* was not merely over whether the underlying sweepstakes claims were subject to arbitration—which would send the question to the arbitrator under the User Agreement's delegation clause—but, in light of the Official Rule's forum-selection clause, whether the parties agreed to delegate that question at all—which must be determined by a court.

This does not mean that parties will always end up in court. In his concurrence, Justice Gorsuch noted that—despite the Court's ruling here—parties could still craft a "master contract" that all disputes arising out of that master contract "or

future agreements," including the question of arbitrability, "shall be decided by an arbitrator." Thus, without some later amendment, such a provision would "seem to require a court to step aside."

### *Key Takeaways*

- Where parties have agreed to only one contract, and that contract contains an arbitration agreement with a delegation clause, questions of arbitrability will generally go to arbitration.
- But when "parties have agreed to *two* contracts—one sending arbitrability disputes to arbitration, and the other either explicitly or implicitly sending arbitrability dispute to the courts—a court must decide which contract governs."
- Per Justice Gorsuch's concurrence, these complications may largely be avoided by entering into a contract providing that "all disputes arising out of or related to this or future agreements between the parties, including questions concerning whether a dispute should be routed to arbitration, shall be decided by an arbitrator."

* This article was originally published on September 26, 2024 on the website of Frost Brown Todd LLP and is republished here with permission. A Trio of Arbitration Cases: Clarifying the Scope of the Federal Arbitration Act