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Client Alert

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Badgerow v. Walters: Supreme Court Narrows Federal Court Jurisdiction Over Arbitration Awards

On March 31, the Supreme Court issued its opinion in *Badgerow v. Walters*, significantly narrowing federal courts' jurisdiction to confirm or vacate an arbitration award under the Federal Arbitration Act.

The Court ruled that federal law claims in the underlying dispute are not sufficient to open the doors to federal court to confirm or vacate an arbitration award. The decision will drive many post-arbitration court battles to state court. And the effects could be felt across the legal spectrum, in disputes involving commercial law, employment law, intellectual property law, and beyond.

BACKGROUND

At both the beginning and end of the life cycle of an arbitration, courts often get involved when one party to a dispute wants to—one way or another—get out of the arbitration.

At the beginning of the dispute, a court may get involved to *enforce* an agreed-upon arbitration clause when one party does not want the dispute to be resolved by arbitration in the first place. Those proceedings are governed by Section 4 of the FAA.

Just over 10 years ago, the Supreme Court determined when federal courts have jurisdiction to handle § 4 petitions to enforce arbitration clauses in *Vaden v. Discover Bank*, 556 U.S. 49 (2009). A "federal court may 'look through' a § 4 petition to determine whether it is predicated on an action that 'arises under' federal law."[1] If so, then federal courts have jurisdiction over the enforcement petition.

After an arbitration concludes, courts once again often become involved in the dispute. This time, either the winning party seeks to "confirm" the

arbitration award, or the losing party seeks to "vacate" the arbitration award—or both. Post-arbitration proceedings are governed by § 9 (to confirm) and § 10 (to vacate) of the FAA.

As the Court explained: "The question presented here is whether that same 'look-through' approach to jurisdiction applies to requests to confirm or vacate arbitral awards under the FAA's Sections 9 and 10."[2]

THE MAJORITY OPINION

Justice Kagan wrote the majority opinion, joined by all the justices other than Justice Breyer. Focusing heavily on the text of the FAA, the Court concluded that the "look through" approach adopted in *Vaden* for Section 4 does *not* apply to requests to confirm or vacate arbitral awards under Sections 9 and 10.

The Court relied heavily on the FAA's text. As the Court put it: "We recognized that [look-through] rule in *Vaden* because careful analysis of Section 4's text showed that Congress wanted it applied to petitions brought under that provision. But Congress has not so directed in Sections 9 and 10."[3]

The Court's textual analysis focused on the language in Section 4. That provision states that a party may petition for an order to compel arbitration in a district court "which, save for [the arbitration] agreement, would have jurisdiction" over the "controversy between the parties."[4] The Court explained that it was Section 4's text which "required approving the 'look through' approach."[5]

The Court then reasoned that Sections 9 and 10 have "none of the statutory language on which *Vaden* relied."[6] Given that lack of textual support, the Court held that it could not "pull[] look-through jurisdiction out of thin air" for applications to confirm or vacate arbitral awards under Sections 9 and 10.[7] Accordingly, the Court concluded, the "look-through" approach does not apply to proceedings under Section 9 and 10.

JUSTICE BREYER'S DISSENT

Justice Breyer wrote the dissenting opinion. As we previously reported, at oral argument he appeared to be leaning in favor of applying the "look through" approach. In his opinion, he focused less on the text of the statute and more on the policy outcomes of the decision: "When interpreting a statute, it is often helpful to consider not simply the statute's literal words, but also the statute's purposes and the likely consequences of our interpretation."[8]

According to Justice Breyer, the majority's interpretation risks creating "unnecessary complexity and confusion."[9] Echoing his concerns at oral argument, Justice Breyer criticized the majority's ruling whereby "the majority holds that a party can ask a federal court to order arbitration under Section 4, but it cannot ask that same court to confirm [or] vacate. . . the order resulting from that arbitration under Section 9 [or] 10."[10]

Justice Breyer "would use the look-through approach to determine jurisdiction under each of the FAA's related provisions."[11] In his view, this approach would "provide a harmonious and comparatively simple jurisdiction-determining rule."[12]

IMPLICATIONS

The Court's decision in *Badgerow* has significant implications for arbitrations where the dispute involves federal law but a party on each side of the "v." is a citizen of the same state and therefore cannot invoke diversity jurisdiction. In those circumstances, the post-arbitration proceedings will likely be funneled to state court.

The Supreme Court itself recognized the consequences of its decision. It stated that the "result" of its ruling "is to give state courts a significant role in implementing the FAA."[13]

This channeling of post-arbitration proceedings to state court could arise in a wide variety of legal contexts. It could particularly impact employment disputes governed by arbitration clauses in an employment agreement—where the employee and the employer often are citizens of the same state.

[1] *Vaden*, 556 U.S. at 62.
[2] *Badgerow* (slip op.) at 2.
[3] *Id.* at 9.
[4] *Id.* at 7.
[5] *Id.* at 8.
[6] *Id.*
[7] *Id.* at 9.
[8] *Badgerow* (slip op.) (Breyer, J. dissenting) at 1.
[9] *Id.*
[10] *Id.* at 7.
[11] *Id.* at 4.
[12] *Id.*
[13] *Badgerow* (slip op.) at 16.