Supreme Court Rules That Contracts Determine if Disputes go to Arbitration

January 8, 2019 - The US Supreme Court has ruled unanimously that contract language should determine whether or not disputes are settled through arbitration, even if the issue being disputed isn't a part of the contract. The ruling overturns decisions by both a federal district court and the US 5 Circuit Court of Appeals.

The case (HENRY SCHEIN, INC., ET AL. v. ARCHER & WHITESALES, INC.) was between a medical device manufacturer and a distributor. The distributor claimed that the manufacturer was violating federal antitrust laws; something not covered by the contract. Because of this, it filed suit against the manufacturer in federal court. Both the lower court and the appeals court agreed with the distributor that it was pointless to file an arbitration claim for something that "wholly groundless"; meaning it wasn't covered by the contract between them. But the Supreme Court disagreed.

The result hinged on the Federal Arbitration Act. Writing for the court in his first opinion, Justice Brett Kavanaugh wrote, " The Act does not contain a 'wholly groundless' exception, and we are not at liberty to rewrite the statute passed by Congress and signed by the President. When the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract. We vacate the contrary judgment of the Court of Appeals

Arbitration contracts typically leave it up to the assigned arbitrator to determine if a disputed issue is covered by the contract. If the arbitrator decides it is not, then the parties are free to go to court. If the arbitrator decides that the issue is covered, then arbitration moves forward and court is not an option.

Over the years, we've written fairly regularly about the problems with mandatory arbitration. These issues are especially problematic when the arbitration is taking place between a consumer and a company. The reason for this is that the assigned arbitrator needs to be approved by both the company and the consumer. Arbitrators know that if they rule against companies too often, they will be defacto black-balled. As a result, the vast majority of corporate-consumer arbitration cases are decided in favor of companies.

While we understand the purpose of the Federal Arbitration Act is to reduce the number of cases going to court and speed up the judicial process, the current system is anything but consumer friendly. Somehow or another, the law does need to change. A better way of selecting arbitrators might be to change the way they are selected. Rather than requiring the approval of both parties, perhaps having the ability to eliminate certain arbitrators in certain cases only if they have a

clear conflict of interest. This would certainly go a long way towards leveling the playing field.

Either way, we agree that the courts shouldn't be rewriting laws. Like the law or not, the proper venue for that is with congress and the President; not with the courts.
byJim Malmberg
Note: When posting a comment, please sign-in first if you want a response. If you are not registered, click here. Registration is easy and free.

Follow ACCESS