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Supreme Court Expands Stay And Appeal Rights Under The Federal Arbitration Act

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Courts continuously decide cases that shape businesses' rights to compel parties to arbitrate claims outside of the court system. As a result, business enterprises should monitor these decisions and determine whether they may impact business contracts or affect legal strategies in defending or prosecuting legal claims.

The most recent example is *Arthur Andersen, LLP v. Carlisle*, a case decided by the U.S. Supreme Court on May 4, 2009. The Federal Arbitration Act (FAA) gives parties who sign arbitration agreements the right to request a stay (halt) of court proceedings while a dispute is resolved in arbitration and to file for an immediate appeal if a request for a stay is refused. The question before the Supreme Court in *Carlisle* was whether these stay and appeal rights extended to third parties who could claim the benefit of an arbitration agreement under "third party beneficiary" or other state law doctrines.

Third party beneficiary law allows a non-party to a contract to claim the benefit of the contract where its terms make clear that the non-party was intended to benefit from the contract—even though it was not a party. A related doctrine called "equitable estoppel" allows a non-party to benefit from an arbitration agreement, but also requires a non-party who tries to seek the benefit of the contract to be bound by its terms. Based on these principles, lower federal courts, for example, had determined that a subsidiary or parent of a corporation that signed an arbitration agreement could benefit from and be bound by an arbitration clause even though the subsidiary/parent did not sign the agreement. Similarly, courts have allowed company officers, law firms, accounting firms, and other affiliates or agents of a company that signed an agreement to invoke the arbitration clause in the contract even though they themselves did not sign it.

Lower courts had disagreed about whether these non-parties could invoke the valuable stay and appeal rights in the FAA in the same way as parties who actually signed the agreement. In a 6-3 decision, the Supreme Court held in *Carlisle* that *any* party who could claim the benefit of an agreement under state contract law—whether a signatory or not—was entitled to these FAA rights.

By making clear that non-parties can invoke these powerful FAA enforcement mechanisms, the decision gives arbitration agreements a broader practical reach. For example, a business that utilizes

arbitration clauses to protect itself from court disputes can be confident that its officers and affiliates will also be able to use the FAA to require arbitration, even though they are not parties to the underlying arbitration agreements.

Businesses should be aware that state law presents multiple scenarios where non-parties can claim the benefits of an arbitration agreement. As noted, claims against parents, subsidiaries, and officers of a corporate party present a situation where non-parties can demand arbitration or can be required to arbitrate. Likewise, where a contract at the center of a dispute imposes arbitration, the arbitration provisions may be applied to a non-party. For instance, if there is a dispute among three parties and the key issues in the dispute are governed by a contract between only two of them that includes an arbitration clause, the party that is not part of that agreement may be able to invoke the FAA enforcement tools to compel arbitration.

In sum, a business should always evaluate whether arbitration may be a preferred forum for the resolution of a dispute. If so, even if it is not itself a party to an arbitration agreement, it should ask whether there is a basis to use the stay and appeal provisions of the FAA to require arbitration. At the same time, businesses should be aware of the possibility that an adversary could invoke the stay and appeal rights as a non-party. Even an unmeritorious request for a stay by an adversary will increase the cost of litigation and delay court proceedings until the appeal has been decided. In fact, the dissenting justices in *Carlisle* pointed out that one undesirable policy outcome of the case is that non-parties to arbitration agreements could make far-fetched claims that they should benefit from the agreement simply to use the stay and appeal process to delay progress in court.

Carlisle also is a reminder that arbitration rights continue to be adjusted by both state and federal court decisions. Businesses that regularly include arbitration provisions in contracts should pay attention to decisions on the subject and continually review and update standard arbitration provisions in their contracts. This is particularly important for businesses that include arbitration provisions in consumer contracts, where courts are most likely to scrutinize arbitration rights.