Legal Update Article

U.S. Supreme Court Rejects Courts' Use of 'Look-Through' Approach in Reviewing Arbitration Awards

By Samia M. Kirmani, Scott P. Jang, William Robert Gignilliat, Stephanie L. Adler-Paindiris, Richard I. Greenberg & Stephanie E. Satterfield

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Meet the Authors

Samia M. Kirmani
Principal
(617) 367-0025
Samia.Kirmani@jacksonlewis.com

Scott P. Jang
Principal
(415) 394-9400
Scott.Jang@jacksonlewis.com

A federal court must have an independent jurisdictional basis to confirm or vacate an arbitration award and cannot "look through" to the underlying dispute to establish jurisdiction, the U.S. Supreme Court has ruled in a case involving an employee's wrongful termination claim. ***Badgerow v. Walters, et al.***, No. 20-1143 (Mar. 31, 2022).

Although the Court has endorsed a "look-through" approach to federal jurisdiction over petitions to *compel* arbitration under Section 4 of the Federal Arbitration Act (FAA), that approach does not apply to petitions to confirm or vacate an arbitration award under Sections 9 or 10 of the FAA, an 8-1 majority of the Court held, citing the different language in the respective statutory provisions.

Background

Denise Badgerow initiated an arbitration proceeding against her employer, alleging she was unlawfully discharged under state and federal law. Arbitrators dismissed her claims, and she filed a state court action to vacate the arbitration award, contending the award was the product of fraud. The employer removed the case to federal court and filed a petition to confirm the award. Badgerow filed a motion to remand to state court, arguing the federal court lacked jurisdiction either to confirm or vacate the award.

In *Vaden v. Discover Bank*, 556 U. S. 49 (2009), the Court held that, when a party asks a federal court to compel arbitration pursuant to Section 4 of the FAA, the court may employ the "look-through" approach and look to the nature of the underlying dispute to determine whether there is a basis for federal jurisdiction. If the substantive dispute falls within the court's jurisdiction (*e.g.*, the dispute gives rise to federal question or diversity jurisdiction), the court may rule on the petition to compel arbitration of the dispute.

In this case, the district court applied this "look-through" approach, noted the federal claims in the underlying employment dispute, and determined it had federal question jurisdiction to rule on the employer's motion to confirm the award. The district court observed that *Vaden* addressed the distinctive text of Section 4 of the FAA (not Sections 9 or 10), but it adopted the look-through approach nonetheless, reasoning that "consistent jurisdictional principles" should apply to all FAA questions. The U.S. Court of Appeals for the Fifth Circuit affirmed, citing its own recent decision adopting similar reasoning.

Limited Federal Court Jurisdiction to Confirm or Vacate Arbitral Awards

William Robert Gignilliat
(He/Him • Rob)
Principal
864-672-8516
William.Gignilliat@jacksonlewis.com

Stephanie L. Adler-Paindiris
(Pain-DEAR-is • She/Her)
Principal
(407) 246-8409
Stephanie.Adler-Paindiris@jacksonlewis.com

Richard I. Greenberg
(Rich)
Principal
(212) 545-4080
Richard.Greenberg@jacksonlewis.com

Stephanie E. Satterfield
(She/Her)
Principal
(864) 672-8048

In an opinion authored by Justice Elena Kagan, the Court held the look-through approach to determining federal jurisdiction does not apply to requests for federal court review of arbitration awards.

The FAA does not itself provide a basis for federal court jurisdiction to resolve an arbitration dispute; there must be an independent basis for federal jurisdiction, the Court explained.

The express language of Section 4 warrants use of the look-through approach for petitions to compel arbitration pursuant to an arbitration agreement where the federal court would otherwise have jurisdiction over the underlying controversy. The "save for" clause of Section 4 instructs the federal court "to imagine a world without an arbitration agreement, and to ask whether it would then have jurisdiction over the parties' dispute," the Court explained. There is no support, however, for the look-through approach in the text of Sections 9 or 10, which does not contain similar language.

In this instance, although the underlying termination dispute involved federal claims, the controversy at issue involved the enforceability of an arbitration award, which the Court said is merely a contractual dispute that typically involves only state law. Therefore, there was no federal question jurisdiction. Further, there was no diversity jurisdiction because the parties were from the same state. In sum, the Court held that there was no independent basis for federal jurisdiction and the district court should have remanded to the state court to review the award.

Dissent

Justice Stephen Breyer dissented. He argued that use of a disparate jurisdictional approach to distinct FAA provisions would result in "unnecessary complexity and confusion" and was not in keeping with *Vaden*'s practical reasons for adopting the look-through approach for questions of jurisdiction under Section 4 — or the purposes underlying the FAA.

The majority was not persuaded by the dissent. The majority concluded that the asserted advantages of a uniform jurisdictional test, and fears of confusion that might otherwise result, were overstated.

Takeaways

Prohibiting the use of the look-through jurisdiction under Sections 9 and 10 of the FAA does not affect the Court's recent jurisprudence that has broadly construed and applied the substantive provisions of the FAA. The *Badgerow* opinion also confirms that courts may continue to use the look-through approach to establish jurisdiction when an employer seeks to compel arbitration under Section 4 of the FAA. However, employers should anticipate additional litigation on whether federal courts have jurisdiction over requests to confirm and vacate arbitral awards.

Lastly, employers seeking to confirm or vacate an arbitral award where there is no independent basis for invoking federal jurisdiction should remain mindful of the different state law procedures for confirming or vacating an arbitral award, including the potentially different time limits for initiating such procedures.

Jackson Lewis attorneys are closely monitoring the Court's activity. Please contact

Stephanie.Satterfield@jacksonlewis.com

a Jackson Lewis attorney with any questions about this and other cases on the Court's docket.

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