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Legal Sidebar

Smith v. Spizzirri: Supreme Court to Consider Whether Federal Courts May Dismiss a Lawsuit Subject to Arbitration

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In *Smith v. Spizzirri*, the Supreme Court will consider whether Section 3 of the Federal Arbitration Act (FAA) permits federal trial courts to dismiss a lawsuit, rather than stay the case, when all of the claims are subject to arbitration. Federal courts of appeals have split on this issue, and the Supreme Court's eventual decision could affect the availability of significant procedural rights in disputes involving arbitration agreements. This Legal Sidebar provides background on the FAA and Section 3's stay provision, examines the lower court's ruling in *Spizzirri* and the circuit split, and discusses considerations for Congress.

Background

In general, the FAA requires courts to treat written arbitration agreements as "valid, irrevocable, and enforceable," and requires courts to "rigorously" enforce the agreements according to their terms. The Supreme Court has characterized the FAA as establishing a "national policy favoring arbitration" and reflecting Congress's intent "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." Under Section 3 of the FAA, a party to an arbitration agreement faced with a federal lawsuit may request a stay of the court case pending arbitration. A stay pauses the judicial proceeding, but the court retains jurisdiction over the case. Relatedly, under Section 4, a party may seek to compel an adversary to resolve the dispute in binding arbitration pursuant to the agreement.

Staying a court case pending arbitration rather than dismissing it has a number of potential procedural consequences. Perhaps most significantly, when a court stays a case and orders the parties to arbitrate the dispute, the party opposing arbitration does not have the right to an immediate appeal of that interlocutory (i.e., non-final) order compelling arbitration. Instead, a party seeking to challenge the order compelling arbitration generally has to wait until the arbitration concludes, unless the district court and appellate court both agree to permit a discretionary appeal under 28 U.S.C. § 1292(b). In contrast, when a court dismisses a lawsuit rather than staying it, the court's dismissal order is a final decision subject to immediate appeal.

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Spizzirri and the Circuit Split

While Section 3 of the FAA states that district courts "shall on application of one of the parties stay the trial of the action until such arbitration has been had," the U.S. Court of Appeals for the Ninth Circuit ruled in *Spizzirri* that district courts nonetheless have discretion to dismiss a lawsuit instead of staying it. Observing that this issue has divided the federal courts of appeals, the appellate panel explained that "although the plain text of the FAA appears to mandate a stay pending arbitration upon application of a party," the Ninth Circuit "has long carved out an exception if all claims are subject to arbitration." The court unanimously affirmed a district court's discretion to dismiss notwithstanding Section 3, but it emphasized that binding Ninth Circuit precedent dictated the outcome of the case. In a concurring opinion, two of the judges suggested that they disagreed with the precedent and urged the Supreme Court to resolve the circuit split.

Although the *Spizzirri* court did not elaborate on underlying reasons for reading an exception into Section 3, other courts recognizing the exception have provided a number of reasons for doing so. The most commonly invoked justification appears to be judicial efficiency. Courts dismissing lawsuits pending arbitration have stated that staying a case when all the claims must be arbitrated would "serve no purpose" and "waste judicial resources." Some courts and legal scholars have also made a textual argument for the exception. Focusing on Section 3's reference to staying "the trial of the action," the argument posits that there is no "trial of the action" to stay once a court has determined all claims in a lawsuit must be submitted to arbitration, and that Section 3 therefore does not apply in such circumstances.

In contrast, a number of federal courts of appeals have held that Section 3 leaves no discretion for district courts to dismiss a suit pending arbitration when a party requests a stay. These courts have generally concluded that Section 3's plain language, as well as the structure and purpose of the FAA, require staying a case pending arbitration. For example, in ruling that Section 3 does not permit discretionary dismissals when a party requests a stay, the Second Circuit explained that "it is axiomatic that the mandatory term 'shall' typically 'creates an obligation impervious to judicial discretion.'" The Second Circuit further explained that it viewed the FAA's structure and purpose as supporting that conclusion. The FAA expressly permits interlocutory appeals of orders *denying* motions to stay court proceedings or compel arbitration, but it expressly prohibits interlocutory appeals of orders *granting* those motions (except for discretionary appeals under 28 U.S.C. § 1292(b)). In the Second Circuit's view, allowing judges to "convert[] an otherwise-unappealable interlocutory stay order into an appealable final dismissal order" would thus "empower them to confer appellate rights expressly proscribed by Congress." According to the Second Circuit, a mandatory stay is also consistent with the FAA's underlying policy of expediting arbitration, insofar as a stay "enables parties to proceed to arbitration directly, unencumbered by the uncertainty and expense of additional litigation."

Considerations for Congress

Spizzirri is the third case arising under the FAA that the Supreme Court has agreed to hear this term. In *Bissonnette v. LePage Bakeries Park St., LLC*, the Court will consider the scope of the FAA's exemption for transportation workers, and in *Coinbase, Inc. v. Suski,* the Court will consider whether an arbitrator or a court should decide certain arbitration issues.

If Congress disagrees with the Supreme Court's eventual decision in *Spizzirri*, it may enact legislation to amend the FAA in response. As discussed above, some appellate courts have determined that mandatory stays under Section 3 further the FAA's pro-arbitration purposes by moving arbitrable claims out of litigation more expeditiously than a dismissal subject to immediate appeal. The FAA's legislative history also reflects that permitting parties to avoid the "delay and expense" of litigation was a primary concern for Congress when it originally enacted the law. Although there appears to be little information available

specifically addressing Section 3's drafting history, a legal scholar has concluded that "what material is available is consistent with the mandatory-stay approach." If Congress prefers mandatory stays, it could amend Section 3 to clarify that dismissals are not permitted when a party requests a stay. On the other hand, if Congress prefers to afford federal trial courts discretion to dismiss, so as to give them more flexibility in managing their congested dockets, it could amend Section 3 to expressly permit judges to dismiss a lawsuit pending arbitration when all of the claims are subject to arbitration.

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