

# Supreme Court to decide questions of authority in arbitration enforcement

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Arbitration clauses, often included in consumer and employment agreements as an alternative to litigation, require legal disputes to be resolved by the decision of a private third party rather than a court. The 1925 Federal Arbitration Act (FAA) sought to enforce arbitration agreements involving interstate or foreign commerce by limiting courts from reviewing and setting aside arbitration awards. Disputes over federal jurisdiction to confirm or vacate arbitration awards continues to be hotly contested, with the case of *Badgerow v. Walters* reaching the Supreme Court this term.

On Nov. 2, the Supreme Court heard oral argument in *Badgerow v. Walters*. In this case, a terminated employee, Badgerow, filed a claim with an arbitration panel, pursuant to her employment contract's arbitration clause. Badgerow sought damages for tortious interference of contract and for

violation of Louisiana's whistleblower law. When the arbitration panel sided with her former employer, REJ Properties Inc., Badgerow filed a lawsuit in Louisiana state court alleging her former employer obtained the award by fraud. REJ Properties Inc. removed the case to federal court, claiming the underlying issues were based on federal securities law.

The federal court found that it had jurisdiction in the case due to the questions of federal law and confirmed the arbitration award following the "look through" approach, as established in a previous decision, *Vaden v. Discover Bank*, regarding motions to compel arbitration. In other words, the federal court "looked through" to the underlying dispute involving federal securities law.

At issue is whether federal courts have jurisdiction to confirm or vacate arbitration awards when the only basis for jurisdiction is that the underlying dispute involves a question of federal law. Federal courts, unlike state courts, have limited jurisdiction that can only hear cases and controversies where the Constitution or Congress has granted them such authority.

During oral argument, SCOTUS justices' questions revolved around two points: one, the Supreme Court's previous statements that the FAA's provisions do not automatically establish federal jurisdiction, and two, whether the "look through" approach to determine federal jurisdiction over motions to compel arbitration also applies to motions to vacate or confirm an arbitration award. The ultimate decision likely comes down to whether SCOTUS will extend its reasoning in *Vaden* to allow federal courts to confirm or vacate arbitration awards where federal courts would have jurisdiction to hear the underlying dispute had the issue been litigated.

Businesses should consider revisiting the arbitration clause

language included in its contracts with award confirmation in mind.

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