Arbitration Law Review

Volume 12 Article 6

5-1-2020

Third Circuit Court of Appeals Expands Protected Class Under Section One of the FAA to Include Workers Who Transport Passengers: A Comment on Singh V. Uber Technology, INC.

Patrick Ouellette

THIRD CIRCUIT COURT OF APPEALS EXPANDS PROTECTED CLASS UNDER SECTION ONE OF THE FAA TO INCLUDE WORKERS WHO TRANSPORT PASSENGERS: A COMMENT ON *SINGH V. UBER TECHNOLOGY, INC.*

By
Patrick Ouellette*

I. Introduction

Section two of the Federal Arbitration Act (FAA) "is a congressional declaration of a liberal federal policy favoring arbitration agreements."[1] Section two has been the lens through which arbitration agreements have been viewed since Justice Brennan wrote it in 1983 in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp*.[2] Consistent with the federal policy favoring arbitration, courts seldom invalidate arbitral agreements negotiated and agreed upon between two consenting parties. However, section one of the FAA includes an exemption.[3] The exemption states that the FAA does not apply "to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[4]

The Supreme Court has generally tried limiting the scope of the exemption in an attempt to limit forum shopping from opportunistic counsel.[5] However, the Court has ruled consistently that the employment contracts of railroad employees and seamen are exempt from the FAA.[6] It is the part of the clause concerning "workers engaged in foreign or interstate commerce" that has required the most clarification from courts.[7] In the case that will be discussed in this comment, a driver for the ridesharing company Uber Technologies, Inc. (Uber) has asked the Third Circuit to find that he is an employee that is engaged in interstate commerce, and thus his dispute should be exempt from arbitration under section one of the FAA.[8] The Third Circuit reversed a decision by a

---

* The author is an Associate Editor of the *Arbitration Law Review* and a 2021 Juris Doctor Candidate at The Pennsylvania State University Law School.

[1] *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983).

[2] *Id.* at 24.

[3] 9 U.S.C. §1 (1925).

[4] *Id.*

[5] Jean R. Sternlight, *Forum Shopping for Arbitration Decisions: Federal Courts' Use of Antisuit Injunctions Against State Courts*, 147 U. PA.L.REV. 91, 92 (1998).

[6] *Chandris v. Latis*, 515 U.S. 347, 354 (1995) (holding that seaman of all sorts are exempt from the FAA under section one).

[7] 9 U.S.C. §1 (1925).

[8] *Singh v. Uber Tech. Inc*., 939 F.3d 210, 214 (3d Cir. 2019)

lower court that compelled arbitration, and remanded for a new trial consistent with an interpretation granting an exemption for employees who transport passengers.[9]

II. Case Background

Jaswinder Singh (Singh) was a driver for Uber.[10] He brought a putative class action in the Superior Court of New Jersey on behalf of himself and all those similarly situated Uber drivers in New Jersey.[11] Singh claims that Uber "misclassified" the drivers as independent contractors instead of employees.[12] As a result of the misclassification, the drivers were deprived of overtime compensation and were forced to incur business expenses for the benefit of Uber.[13]

Uber removed the case to the federal district court in New Jersey, and then filed a motion to dismiss and sought to compel Singh to arbitrate based on the arbitration agreement Singh had signed when he began working for Uber.[14] Singh opposed the motion to compel arbitration on multiple grounds.[15] Singh first argued that no valid agreement existed between him and Uber at the time that Singh began his employment with Uber.[16] Singh further contended that, even if a valid agreement did exist, Singh would not be bound to the arbitration provision of the contract because Uber failed to meet its burden to show that the provision was a constitutional waiver of the Seventh Amendment right to a jury trial, the provision is excluded under the residual clause of section one of the FAA, the provision violated multiple state and federal laws, and the provision was unconscionable.[17] Singh additionally claimed that the agreement with Uber is within the residual clause of section one of the FAA.[18] With respect to Singh's second contention regarding the residual clause and why he should not be bound by the arbitration provision, Singh stated the necessity for discovery on the essential section one

---

[9] *Singh*, 939 F.3d at 215.

[10] *Id.* at 210, 214.

[11] *Id.* at 214.

[12] *Id.* at 215-16.

[13] *Id.* at 215-16.

[14] *Id.* at 216.

[15] *Id*.

[16] *Id*.

[17] *Id.* at 216. *See* 29 U.S.C.S §151 (1947); 29 U.S.C.S §101 (1932); N.J. Stat. §34:11-56a. (1966)

[18] *Singh*, 939 F.3d at 216.

residual clause inquiry, as discovery would allow Singh to prove he was engaged in interstate commerce.[19]

Uber asked the district court to reject Singh's claim on the grounds that the residual clause only applies to workers who transport goods, not passengers.[20] The district court granted Uber's motion to dismiss and compel arbitration.[21] However, the district court did not reach the "engaged-in-interstate commerce" inquiry.[22] The district court ruled that Singh did not fall within the ambit of the residual clause of section one, holding that the clause only extends to "transportation workers who transport goods, not those who transport passengers."[23] Therefore, the district court ruled that the arbitrator would decide the remaining questions not answered during the district court's original ruling.[24]

III. Third Circuit's Analysis

The Third Circuit disagreed with the district court and relied on precedent, which stated that section one of the FAA may extend to classes of transportation workers who transport passengers, so long as they are engaged in, or work closely related to, interstate commerce. [25] The Third Circuit remanded the decision back to the district court for further proceedings consistent with the Third Circuit's interpretation.[26]

Before any case involving arbitration can move forward, the court must decide the threshold issue of if the arbitrator has the power to decide to hear the claim.[27] Arbitration agreements are equal with all other contracts, and should be enforced according to their terms agreed on by the parties.[28] When the FAA is controlling in arbitration disputes, parties are free to include a delegation clause to the contract that allows the arbitrator to

---

[19] *Id.* at 216.

[20] *Id.*.

[21] *Id.* at 216.

[22] *Id.* at 216-17.

[23] *Id*. at 217.

[24] *Id*.

[25] *Id.* at 214.

[26] *Id.* at 228.

[27] *Singh*, 939 F.3d at 215; *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (discussing the court's ability to decide the "gateway question of arbitrability").

[28] *Singh*, 939 F.3d at 215; *MacDonald v. Cashcall, Inc.*, 883 F.3d 220, 226 (3rd Cir. 2018) (explaining the FAA's effect on arbitration agreements is to make arbitration agreements as valid as all other agreements).

decide arbitrability.[29] However, since Singh contended that the FAA is not controlling based on section one of the FAA, the Third Circuit relied on *New Prime, Inc. v. Olivera*, which was decided by the Supreme Court during the pendency of this appeal.[30] *New Prime* stated that courts should be the ones to determine whether an agreement is excluded from FAA coverage, even where the parties have agreed to a delegation clause, like Singh and Uber have in this case.[31] The Third Circuit decided that the district court should properly determine whether the arbitration agreement is valid.[32]

With the court using the precedent in *New Prime* to rule that the Third Circuit is responsible for deciding if the arbitration agreement is exempt under section one of the FAA, the Third Circuit next decided if Singh had put forth enough evidence to warrant discovery on Singh's contention that the provision was excluded under the residual clause of section one of the FAA.[33] The Third Circuit laid out the applicable standard of review under which motions to compel arbitration could be decided.[34] As described in *Guidotti v. Legal Helpers Debt Resolution, LLC*., the two possible standards are the motion to dismiss standard, or the summary judgment standard.[35] The motion to dismiss standard applies when a party's claims are "subject to an enforceable arbitration clause," meaning the complaint and incorporated documents support a valid agreement to arbitrate on their face.[36] The summary judgment standard, however, is used when "the complaint and its supporting documents are unclear" as to whether the parties agreed to arbitrate, or the plaintiff has responded with "additional facts sufficient to place the agreement in dispute," requiring a "restricted inquiry" into the additional facts.[37] The Third Circuit articulated a balancing test, juxtaposing the efficiency and speed fostered by the FAA,

---

[29] *Singh*, 939 F.3d at 215; *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 70-72 (2010) (discussing parties' ability to include delegation clause that gives an arbitrator the ability to decide the threshold issue of arbitrability).

[30] *Singh*, 939 F.3d at 215; *New Prime Inc*., 139 S. Ct. at 532, 538 (granting an exemption to independent contractors under section one of the FAA).

[31] *Singh*, 939 F.3d at 215; *New Prime Inc.*, 139 S. Ct. at 532, 538.

[32] *Singh*, 939 F.3d at 215.

[33] *Singh*, 939 F.3d at 216.

[34] *Id.*

[35] *Singh*, 939 F.3d at 216; *Guidotti v. Legal Helpers Debt Resolution, L.L.C*., 716 F.3d 764, 771-772 (3d Cir. 2013) (describing the two standards of review for motion to compel arbitration: the motion to dismiss under Fed. R. Civ. P. 12(b)(6) and the motion for summary judgment under Fed. R. Civ. P. 56(c)(1)(A)).

[36] *Singh*, 939 F.3d at 216.

[37] *Id.*

with the need for clarity of an ambiguous argument.[38] Since the Third Circuit determined this to be an agreement that needed clarity, the court used the summary judgment standard and allowed for a "restricted inquiry" in an attempt to clarify whether the FAA controlled.[39]

Substantively, the court decided the question of whether the section one residual clause applies, and the FAA is not controlling, could be determined by answering two questions: first, whether section one applies to transportation workers who transport passengers; and, second, whether Singh belongs to a class of workers that are engaged in interstate commerce.[40] The Third Circuit had previously ruled that the residual clause only includes those other classes of workers "who are actually engaged in the movement of interstate or foreign commerce or in work so closely related thereto as to be in practical effect part of it."[41] The court also relied on precedent from a pair of cases involving the Pennsylvania Greyhound Lines, a bus company where the employees transported passengers.[42] In both cases, the Third Circuit ruled that the workers of the bus line employees qualified as employment of a class of workers engaged in interstate commerce.[43] The court saw these decisions confirmed in later Supreme Court decisions.[44] Consequently, the court denied Uber's assertions that section one of the FAA refers only to workers who transport goods, not to workers who transport people.[45] The court ruled that section one applied to transportation workers who transport passengers.[46]

Next, the court decided whether Singh belonged to a class of workers that are engaged in interstate commerce.[47] This was a matter of first impression in the Third

---

[38] *Id*. at 218.

[39] *Id*. at 216.

[40] *Id*. at 219.

[41] *Singh*, 939 F.3d at 220; *Tenney Engineering, Inc. v. United Electrical Radio & Machine Workers of America, (U.E.) Local 437*, 207 F.2d 450, 452 (3d Cir. 1953).

[42] *Singh*, 939 F.3d at 220; *Amalgamated Association Street Electric Railway of Motor Coach Employees of America, Local Div. 1210 v. Pennsylvania Greyhound Lines*, 192 F.2d 310, 313 (3d Cir. 1951); *Pennsylvania Greyhound Lines v. Amalgamated Association Street Electric Railway of Motor Coach Employees of America, Local Div. 1063*, 193 F.2d 327, 328 (3d Cir. 1952).

[43] *Singh*, 939 F.3d at 220; *Amalgamated Association Street Electric Railway of Motor Coach Employees of America, Local Div. 1210*, 192 F.2d at 310, 313; *Pennsylvania Greyhound Lines*, 193 F.2d at 327, 328

[44] *Singh*, 939 F.3d at 221-24.

[45] *Id.* at 225-26.

[46] *Id.* at 226.

[47] *Id.* at 226-28.

Circuit because the district court did not rule on this issue in its original ruling, so the Court of Appeals remanded the case back to the district court.[48] The Third Circuit ruled that the summary judgment standard should apply following discovery to clarify the arbitration provision and the related incorporated documents.[49]

IV. Significance

The Third Circuit overturning the district court in *Singh* under section one of the FAA is important to the future of arbitration. This decision will likely provide a solid precedent for other parties hoping to avoid arbitration. In addition, the Third Circuit may have limited the scope of the FAA as the governing document over arbitration agreements due to the expansive reading of the Commerce Clause. Finally, the Supreme Court may grant certiorari to decide *Singh*, especially in light of other recently decided cases, to address the issue of what classes of workers are exempt from the FAA.

First, the issue of transportation workers being able to fight mandatory arbitration has been a contentious issue for transportation unions.[50] Mandatory arbitration agreements are commonplace among independent contractors.[51] However, the largest truck driver union, the Teamsters, has fought for their unionized drivers to be classified as employees, and thus exempted from mandatory arbitration.[52] This was the driving issue that allowed the Court to decide *New Prime*.[53] *New Prime* involved a dispute between an interstate shipping company and workers who were classified as independent contractors, in which the Court ruled that companies could not circumvent federal law by classifying employees as independent contractors.[54] *New Prime* marks a shift towards further exemptions for those in the transportation industry.[55] *Singh* also follows the ruling in *New Prime* by expanding the coverage of section one of the FAA to independent

---

[48] *Id.* at 228.

[49] *Id.* at 227-28.

[50] Margot Roosevelt, *Supreme Court ruling gives truckers a victory and a new weapon in labor war at L.A. ports*, THELATIMES.COM (Jan. 16, 2019) https://www.latimes.com/business/la-fi-truckers-supreme-court-20190116-story.html.

[51] Myriam Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 MICH. L. REV. 373, 375-76 (2005) (documenting the rise in popularity of class action waivers in contractual arbitration agreements).

[52] *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 538 (2019).

[53] *Id.*

[54] *Id.*

[55] Shauna Johnson Clark, *The "Best of" Litigation Update 2019: An Epic Year For Employment Law: 2018 in Review*, 87 THE ADVOCATE 499, 500 (2019) (discussing the effect that *New Prime* will have on how companies structure their business with independent contractors).

contractors.[56] This is a trend that more states are following, in which they close loopholes in employment law by not allowing companies to classify employees as independent contractors to avoid paying benefits that come along with employee status.[57]

Second, there are currently two cases that will be tried in the New Jersey Supreme Court involving exemption from FAA due to the residual clause of section one.[58] The first case involves truck drivers who deliver certain pharmaceuticals who are being forced to arbitrate their employment contract.[59] The second claim involves a different delivery company's driver who is contesting whether his profession is covered under section one of the FAA because he is engaged in interstate commerce.[60] It is likely that the decision in *Singh* will give more credence to the plaintiffs' claims in the aforementioned cases, which are attempting to prove they are engaged in interstate commerce.[61] The New Jersey Supreme Court could use the decision in *Singh* to justify a more expansive definition of interstate commerce, and rule that the two separate plaintiffs are both engaged in interstate commerce.

Singh is a step towards an expansion of exemptions for the FAA.[62] One point relied on by Uber was the dicta in Supreme Court case *Circuit City v. Adams*.[63] Uber's argument stated that if Congress wanted to expand the definition of the exemption, Congress would enact special legislation in order to accomplish this result.[64] The decision in *Singh* does not require Congress to enact new legislation to protect certain classes of

---

[56] *Singh*, 939 F.3d at 220.

[57] V.B. Dubal, *Winning The Battle, Losing The War?: Assessing the Impact Of Misclassification Litigation on Workers in the Gig Economy*, 17 WIS. L. REV. 739 (2017) (discussing "Freelancers Aren't Free" laws in New York that prevents companies from misclassifying workers to avoid employee guarantees such as paying minimum wage, overtime, workers' compensation, unemployment insurance, freedom from discrimination at work, and the right to collectively bargain).

[58] *Arafa v. Health Express Corp.*, A-1862-17T3, 2019 LEXIS 1283 at *1 (N.J. Super. Ct. June 5, 2019); *Colon v. Strategic Delivery Solutions, LLC*, 459 N.J. Super. 349 (N.J. Super. Ct. June 4, 2019).

[59] *Arafa v. Health Express Corp.*, A-1862-17T3, 2019 LEXIS 1283 at *1, *2 (N.J. Super. Ct. June 5, 2019).

[60] *Colon*, 459 N.J. Super. at 354.

[61] *Id*.

[62] 9 U.S.C. §1 (1925).

[63] *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2011).

[64] *Id.* at 112 (explaining the circuit split that the Court's decision would be resolving. Uber used this dictum in their argument: "most circuits as having concluded that the residual clause of § 1 only excludes "transportation workers, defined, for instance, as those workers 'actually engaged in the movement of goods in interstate commerce.'"").

employees.[65] Instead, the interpretation of which employees are exempt under section one is now left to the courts to determine.[66] It would not be surprising to see cases decided in the future from circuits that have been less friendly to arbitration using section one as justification to limit adhesive arbitration agreements.

Finally, the Supreme Court has the option of reviewing the decision by the Third Circuit. The Supreme Court has shaped the field of arbitration since the introduction of the FAA.[67] There have never been clearer lines about what areas the FAA preempts and what areas are governed by state law.[68] Whether workers who transport passengers, the issue in Singh, are expempted from the FAA would be well suited for a decision by the Supreme Court.[69] The Court could either uphold the Third Circuit's definition and explicitly rule that employees that transport passengers are exempt under section one of the FAA, or the Court could take a more traditional approach and narrow the exemption under section one to only include those individuals who are directly involved in interstate commerce.[70] While ruling this way may be slightly less consistent with the textual reading of the FAA, it would be much more consistent with the liberal federal policy of enforcing arbitration agreements."[71] Either way, clarification would be helpful for employees and businesses alike.

If Uber chooses to appeal, it is possible that the Supreme Court will choose not to grant certiorari to *Singh.* The Supreme Court grants certiorari as a matter of judicial discretion, based on a number of factors.[72] However, by failing to review *Singh*, and under the new ruling of *New Prime*, it would be lower courts that are deciding if an arbitration agreement is exempt from being enforced under section one.[73] States who have traditionally viewed as opposing mandatory arbitration may be likely to use this new exemption to invalidate arbitration agreements that would otherwise be

---

[65] *Singh*, 939 F.3d at 223-24 (disagreeing with Uber's argument and remanding case back to district court to continue with proceedings consistent with Third Circuit's ruling).

[66] *Singh*, 939 F.3d at 221-24, *see also New Prime*, 139 S. Ct. at 538.

[67] Craig E. Cataldo, *Delegating the Administration of Justice: The Need to Update the Federal Arbitration Act*, 52 SUFFOLK U. L. REV. 37 (2019) (explaining the origin of the FAA and the subsequent shaping of the FAA by the Supreme Court).

[68] *See Doctor's Association, Inc. v. Casarotto*, 517 U.S. 681 (1996), *see also Southland Corp. v. Keating*, 465 U.S. 1 (1984) (holding the FAA preempts state law where applicable).

[69] *Singh*, 939 F.3d at 220.

[70] *Id.* at 226-28.

[71] *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24.

[72] SUP. CT. R. 10.

[73] *New Prime Inc.*, 139 S. Ct. at 538.

enforceable.[74] The Supreme Court allowing this result would be atypical, as it is contrary to Supreme Court holdings prohibiting states from passing laws that are discriminatory to arbitration.[75]

V. Critique

Singh was decided using Third Circuit precedent, but the case may have consequences that directly contrast with the Supreme Court's liberal policy favoring arbitration. The Supreme Court has granted immense deference to Congress concerning issues of interstate commerce under the Commerce Clause.[76] In doing so, the definition of what constitutes interstate commerce now includes almost all commerce.[77] Based on the holding in *Singh*, this result could lead to a new wave of challenges to arbitration agreements under section one of the FAA.[78]

With the definition of commerce encompassing most industries, the Supreme Court has awarded Congress a great deal of oversight in regulating commerce among the states.[79] At the same time, the Supreme Court has also extended federal preemption in arbitration which has led to the FAA is the controlling on almost all arbitration agreements.[80] Both the expansion of the Commerce Clause and the FAA both come from the same basic idea that the federal government has an interest in increasing efficiency in both commerce and the adjudicatory process, and cannot have anything hampering the growth of these two important fields.[81] However, because of the wording in section one of the FAA, the exemption of employees who are involved in interstate commerce expands as the definition of what is considered related to interstate commerce expands.[82]

---

[74] *McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017) (holding that, as a matter of public policy, corporations cannot require consumers to waive right to a public trial).

[75] *Doctor's Association, Inc. v. Casarotto*, 517 U.S. 681 (1996).

[76] *See NLRB v Jones & Laughlin Steel Corp*., 301 U.S. 1 (1937), *see also United States v. Darby*, 312 U.S. 100 (1941), *see also Wickard v. Filburn*, 317 U.S. 111 (1942) (expanding Congress's power under the commerce clause).

[77] *Wickard v. Filburn*, 317 U.S. 111 (1942) (holding that Congress can regulate any activity that has a substantial economic effect on interstate commerce).

[78] *Singh*, 939 F.3d at 226-28.

[79] *Houston, East & West Texas Railway Co. v. United States*, 234 U.S. 342 (1914) (ruling that Congress has the power to regulate operations in all matters that have a substantial effect on interstate commerce).

[80] *See Moses H. Cone Mem'l Hosp.*, 460 U.S. at 1, 24, *see also Doctor's Association, Inc*., 517 U.S. at 681, *see also Southland Corp.*, 465 U.S. at 1.

[81] Richard A. Epstein, *The Proper Scope of the Commerce Power*, 73 VA. L. REV. 1387, 1454-55 (1987) (Discussing limiting the federal government's interest under the Commerce Clause to strictly interstate transportation, navigation and sales, and the activities closely related to them).

[82] 9 U.S.C. §1 (1925).

The more businesses and related activity is considered interstate commerce, the larger the class of employees are that are considered exempt from the FAA under section one.[83] If the exemption is so large that it covers all classes of workers in transportation, including those who are tangentially related to the transport of interstate commerce, the FAA effectively becomes less effective in a governing employment contracts.

Congress and the courts have a legitimate interest in allowing employees to arbitrate their grievances.[84] Arbitration is speedier and more efficient, can be less costly, and allows greater access for justice to the less wealthy.[85] Furthermore, courts would like to avoid opportunistic attempts at forum shopping.[86] If plaintiff attorneys feel they would fare better in court, the attorney can easily claim their client is a worker exempted from the FAA under section one. As such, if the exemption under section one is widely applied, arbitration agreements are in danger of becoming more of a formality, rather than an enforceable agreement.

VI. Conclusion

Singh is a favorable outcome for plaintiffs in the transportation industry that are attempting to limit class action lawsuit waivers. Class action waivers have become frequent in employment contracts that contain arbitration agreements.[87] Since the Court has attempted to apply arbitration agreements as they are written and agreed to by parties, exemptions and exceptions were generally limited. *Singh* gives the plaintiffs precedent for employees that are directly involved in interstate commerce to avoid mandatory arbitration. The Supreme Court would have a good reason to examine a case of this nature in greater detail to provide clarification to which class of workers is exempt under section one.

However, *Singh* also textually upholds the FAA by correctly determining the class of workers that were meant to be exempt from the document.[88] Increases in technology have led to commerce being even more prevalent today.[89] The shipping sector of the

---

[83] *Id.*

[84] *Southland Corp*., 465 U.S. at 1

[85] Jean Murray, *The Difference Between Arbitration and Litigation*, THEBALANCESMB.COM (Aug. 13, 2019) https://www.thebalancesmb.com/arbitration-vs-litigation-what-is-the-difference-398747.

[86] Jean R. Sternlight, *Forum Shopping for Arbitration Decisions: Federal Courts' Use of Antisuit Injunctions Against State Courts*, 147 U. PA. L. REV. 91, 92 (1998).

[87] Myriam Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 MICH. L. REV. 373, 375-76 (2005) (documenting the rise in popularity of class action waivers in contractual arbitration agreements).

[88] 9 U.S.C. §1 (1925).

[89] Department of Transportation, *Bureau of Transportation Statistics*, https://www.bts.gov/browse-statistical-products-and-data/transportation-economic-trends/tet-2017-chapter-4 (last visited Jan. 6, 2019).

economy is one of the largest in the country. According to the Department of Transportation, over 13,000,000 workers are employed in the transportation and warehouse sector.[90] Such a large class of workers being exempt from the FAA is counter to the Supreme Court's attempt to provide a uniform standard for all parties during arbitration disputes. This case is perhaps an opportunity for the Supreme Court to reexamine the FAA, and update it to meet the requirements of the modern day.

---

[90] *Id.*