

Daniel Geyser Discusses Recent SCOTUS Win, Arbitration Trends with Law360

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PRACTICES International Arbitration, Employment Litigation, U.S. Supreme Court

After a recent unanimous Supreme Court win in *Smith vs. Spizzirri*, Haynes Boone Supreme Court Practice Chair [Daniel L. Geyser](#) spoke with *Law360* about recent arbitration trends, how he prepares to argue in front of the Court, and the implications of *Spizzirri* going forward.

Read an excerpt of the article below.

In *Wendy Smith et al. v. Keith Spizzirri et al.* earlier this month, the justices agreed with Geyser, who chairs the high court practice at Haynes Boone LLP, that a federal court must stay a case while claims go to arbitration. The issue came up in an overtime suit by delivery drivers.

... The high court seems to be moving away from how it previously interpreted the Federal Arbitration Act, said Geyser, who has argued 17 cases before the justices, and whom *Law360* has recognized as an "MVP."

"I think that the current court has members who are less concerned about pushing arbitration rights," Geyser said. Instead, they seem "more concerned about enforcing the Federal Arbitration Act according to its terms and giving parties the freedom to decide for themselves whether they want to litigate or arbitrate and not necessarily presume that arbitration is a better means of dispute resolution than litigation."

How significant is that decision?

... For plaintiffs, ... it secures that necessary backstop that protects litigant rights if the arbitration falls through. In our case, the defendants compelled arbitration and then they effectively refused to participate in the arbitration. They wouldn't pay the arbitration fees. So that leaves our side without anywhere to litigate the case. The case is dismissed, so they can't go back to court. They can't go forward with the arbitration because the defendants won't pay the fees. And so that can prejudice the plaintiff's rights.

... [One way] it benefits the defendants, and this actually can benefit the plaintiffs, too, is it leaves a federal court available to facilitate the arbitration. There are problems in certain arbitrations. Sometimes you can't get evidence, you can't get parties to appear. You can't get the arbitrator that everyone thought would arbitrate the case to participate, and you needed a replacement appointed. The Federal Arbitration Act has provisions that help in those situations. But if there isn't a pending federal action, then there isn't jurisdiction for the court to entertain any of those questions. So this can actually be more efficient and save costs for both sides going forward.

What's the big-picture trend in how the high court is interpreting the Federal Arbitration Act?

I think it is a step back from the prior trend, which used to really favor arbitration in a very strong way. It used to be the case that in most arbitration disputes, you could say the outcome at the court will be resolved in favor of arbitration rights.

...I don't think that's true anymore. I think the court is now looking at the Federal Arbitration Act as not necessarily putting a thumb on the scale in favor of arbitration, but putting a thumb on the scale

of just enforcing the parties' agreements. And so I think the court's recent cases have shown it's more of a neutral approach.

You entered *Spizzirri* at the appellate level. As an appellate attorney, what's your process of how you catch up on a case?

I'm an appellate generalist. I do all kinds of cases. ... I've done patent cases, security cases, bankruptcy cases, ERISA cases and arbitration cases, among others. And so the process, and this is part of the fun of being an appellate generalist, is every case is somewhat new. And if you're doing your job correctly, you have to do a deep dive, and by the time you are writing the briefs, you should know the case and the issue as well as anyone else in the country.

... I've now had experience with almost every major area of federal law. So the catch-up process doesn't take as long as it used to because often I'm pretty familiar with an overall statutory scheme, and then it's a question of becoming an expert in the specific question before the court.

Read the full article from *Law360* [here](#).