

The Supreme Court - January 8, 2019

The Supreme Court of the United States issued two decisions today:

Henry Schein, Inc. v. Archer & White Sales, Inc., No. 17-1272: Under the Federal Arbitration Act (“FAA”) and the Court’s precedents, who decides arbitrability is a question of contract, and parties can agree that the arbitrator rather than the court will determine threshold arbitrability questions. Here, when respondent Archer & White sued Henry Schein in federal court, Henry Schein asked the District Court to refer the dispute to arbitration over Archer & White’s objection that the parties’ arbitration agreement did not apply. The parties also disagreed regarding who should decide the arbitrability issue. The District Court took up the issue of arbitrability on its own and denied the motion to compel arbitration, relying on the Fifth Circuit’s “wholly groundless” exception, whereby even when a contract delegates the arbitrability question to an arbitrator, the court can decide the arbitrability question itself if the argument that the arbitration agreement applies to the particular dispute is “wholly groundless.” The Fifth Circuit affirmed. Today, the Court vacated that opinion, unanimously holding, in Justice Kavanaugh’s first opinion, that the “wholly groundless” exception is inconsistent with the Federal Arbitration Act. Instead, when the parties’ contract delegates the arbitrability question to an arbitrator, the courts must respect the parties’ decision as embodied in the contract.

The Court’s decision is available [here](#).

Culbertson v. Berryhill, No. 17-773: Attorneys who represent Social Security claimants before the Social Security Administration and a reviewing court have their fees regulated by the Social Security Act. There are certain fee caps applicable under 42 U.S.C. §406(a) that apply to representation in administrative proceedings. Section 406(b), in turn, which is titled “Fees for representation before court,” limits fees to no more than 25% of past-due benefits. Here, the District Court and Eleventh Circuit held that the 25% limit under §406(b) was an aggregate limit that applied to the total fees awarded under both §§406(a) and (b). The Court today reversed and remanded, holding that because §406(b) by its own terms imposes a 25% cap on fees only for representation before a

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court, and §406(a) has separate caps on fees for representation before the agency, the statute does not impose a 25% cap on aggregate fees.

The Court's decision is available [here](#).