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**Authors:**



Joan W. Feldman  
(860) 251-5104  
jfeldman@goodwin.com



Alexander R. Cox  
(860) 251-5236  
acox@goodwin.com



Stephanie M. Gomes-Ganhão  
(860) 251-5239  
sgomesganhao@goodwin.com

## U.S. Supreme Court Decision Impacts Arbitration Clauses

In a unanimous opinion by the U.S. Supreme Court this week, the Court held that “a court may not decide an arbitrability question that the parties have delegated to an arbitrator.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, No. 17-1272 (U.S. January 8, 2019).

This case arose after Archer and White (“Archer”), a distributor of dental equipment, brought antitrust claims against Henry Schein, Inc. and competitors that distributed and manufactured dental equipment (collectively, “Schein”). Archer alleged that Schein had violated federal and state antitrust law and sought both monetary damages and injunctive relief. Shortly after Archer filed its complaint in court, Schein moved to compel arbitration pursuant to an arbitration clause in the parties’ contract.

The core of the parties’ dispute was over the threshold question of arbitrability (i.e., whether and to what degree would the parties’ dispute be subject to the arbitration clause in their contract). Specifically, the arbitration clause provided as follows: “[a]ny dispute arising under or related to this Agreement (except for actions seeking injunctive relief . . . shall be resolved by binding arbitration . . . .” As Archer had brought claims for both damages and injunctive relief, the parties disagreed about the scope of the arbitration and whether the case should be stayed pending arbitration.

The question before the district court was whether Archer had agreed to binding arbitration on the question of the arbitrability of claims arising from the parties’ contract (i.e., whether the court could answer the initial question of which claims were to be submitted to arbitration or whether an arbitrator should decide). The Fifth Circuit Court of Appeals affirmed the district court’s holding that Schein’s motion to compel arbitration was “wholly groundless” and therefore allowed the court to decide issues of arbitrability. As stated above, the U.S. Supreme Court unanimously reversed that decision and settled the question. Courts may not decide a question of arbitrability when parties have contractually delegated that question to an arbitrator.

While on its face it looks like the matter is settled, this decision left several open questions on remand.<sup>1</sup> In effect, the Court underlined that the arbitration clause should always control, but did not provide guidance on what that clause should look like.

<sup>1</sup> The Court did not opine on whether the specific clause at issue represents “clear and unmistakable evidence” that the parties intended to arbitrate the question of arbitrability.

Therefore, careful consideration should be given to developing arbitration provisions in contracts in order to protect your preferred options for dispute resolution. Whether you prefer to avoid arbitration wherever possible by striking such provisions or are seeking to make sure your arbitration clauses are ironclad or limited in scope, your choice of language will make all the difference to the ultimate resolution of the dispute.

### **Questions or Assistance**

If you have any questions about this alert, please contact: Joan Feldman (jfeldman@goodwin.com or 860.251.5104); Stephanie Gomes-Ganhão (sgomesganhao@goodwin.com or 860.251.5239) or Alex Cox (acox@goodwin.com or 860.251.5236).

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289 Greenwich Avenue  
Greenwich, CT 06830-6595  
203-869-5600

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One Constitution Plaza  
Hartford, CT 06103-1919  
860-251-5000

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265 Church Street - Suite 1207  
New Haven, CT 06510-7013  
203-836-2801

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400 Park Avenue - Fifth Floor  
New York, NY 10022-4406  
212-376-3010

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300 Atlantic Street  
Stamford, CT 06901-3522  
203-324-8100

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1875 K St., NW - Suite 600  
Washington, DC 20006-1251  
202-469-7750

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