As the Supreme Court’s October 2018 term opened, we wrote about three significant cases on its docket involving arbitration, each of which is likely to have an impact on the arbitration of employment-related claims. The Court issued its decision in the first of those cases on January 8, 2019. In his first opinion since joining the Court, Justice Kavanaugh authored the opinion in *Henry Schein, et al. v. Archer & White Sales, Inc.* The issue in the case was whether, under the Federal Arbitration Act, a court may disregard a provision in an arbitration agreement delegating to the arbitrator the authority to determine whether a particular claim is arbitrable under the agreement if the court determines that a party’s argument in favor of arbitration is “wholly groundless.”

Writing for a unanimous Court, Justice Kavanaugh said no, explaining that the Federal Arbitration Act “does not contain a ‘wholly groundless’ exception,” and that the Court was “not at liberty to rewrite the statute passed by Congress and signed by the President.” As the Court explained, “[w]hen the parties’ contract delegates the arbitrability question to an arbitrator, the courts must respect the parties’ decision as embodied in the contract,” and it may not short-circuit that process to determine whether a party’s argument in favor of arbitration is “wholly groundless.”

In light of the Court’s recent decisions favoring arbitration, including last term’s decision in *Epic Systems* (see here), that the Court’s decision in *Henry Schein* received similar treatment, once again favoring parties’ right to contract for arbitration – and the specific procedures agreed to as part of that agreement – over judicially-imposed exceptions to that right, should come as no surprise. What is surprising, however, is that all of the justices, even the now-minority liberal bloc, joined in the decision. That may foreshadow things to come in the other two arbitration-related cases pending before the Court – *Lamps Plus* and *New Prime* (discussed in our prior post here) – or it may not, given that the issue in *Henry Schein* was a relatively narrow issue of determining an exception under the Federal Arbitration Act, whereas the other cases involve more substantial arbitration policy issues. We’ll keep you updated when the decisions in those cases issue.

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