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You Can't Always Get What You Want (In Federal Court)

We all know that federal courts are courts of limited jurisdiction. What does that mean in the arbitration context? Something new as of March 31st!

Federal courts do not have stand-alone jurisdiction to hear any arbitration dispute – there must be an "independent jurisdictional basis" for the federal court to resolve the matter. *See Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S 576, 582 (2008). For motions to compel under the Federal Arbitration Act (FAA), 9 U.S.C. §4, federal courts "look-though" the underlying claim and find jurisdiction when the underlying dispute has a federal question, such as equal protection. *Vaden v. Discover Bank*, 556 U.S. 49 (2009).

As the Supreme Court recently held, that rule does not apply to motions to confirm, vacate, or modify an arbitration award. *Badgerow v. Walters*, 596 U.S. ___, ___, 142 S. Ct. 1310, 1314 (2022). Section 9 and 10 of the FAA, governing vacation and modification, lack the "distinctive" language telling courts to look through to the substantive controversy. *Id.*

So what's the difference? A lot, as it turns out. Motions to compel under FAA Section 4, allow a court to exercise jurisdiction when the parties' underlying substantive dispute would have fallen within the court's jurisdiction. *See Vaden*, 556 U.S. at __. Section 9 and Section 10 of the FAA do not contain the same language as Section 4. *Badgerow*, 596 U.S. at __, 142 S. Ct. at 1315. That means, as the Supreme Court has made explicit, that federal courts do not have jurisdiction to hear a motion to confirm or vacate an arbitration award just because it involves interstate commerce. *Id.* at 1314. There must be an independent ground for federal jurisdiction because the FAA does not itself support federal jurisdiction. *Id.* at 1315.

Federal jurisdiction comes in two flavors: diversity cases – suits between citizens of different states over a threshold value (28 U.S.C. § 1332(a)); and federal question cases (28 U.S.C § 1331). Federal question means that the federal law (as opposed to state law) "creates the cause of action asserted." *Gunn v. Minton*, 568 U.S. 251, 257 (2013). To seek to vacate an arbitral award under Section 10, the applicant "***must*** identify a grant of jurisdiction apart from Section 10 itself, conferring 'access to a federal forum.'" *Badgerow*, 596 U.S. at ___, 142 S. Ct. at 1315 (emphasis added), *quoting Vaden*, 556 U.S. at 59. If the applicant cannot, the dispute belongs in state court. *Id.*

If the arbitration award on its face provides diversity jurisdiction, then the federal courts may hear a motion to vacate or confirm. For example, if the parties are citizens of Maryland and New York, with an award of more than $75,000, the Section 1332(a) grants the court diversity jurisdiction. If the application alleges that federal law (other than Section 1331) gives the court federal jurisdiction, then the federal courts may hear a motion to vacate or confirm. The enforceability of an arbitration award is ***not*** a federal question: it is "no more than a contractual resolution of the parties' dispute—a way of settling legal claims." *Badgerow*, 596 U.S. at __, 142 S. Ct. at 1317, *citing Vaden*, 556 U.S. at 63. Look-through jurisdiction cannot, as the Supreme Court reminds us, be pulled "our of thin air." *Id.* at ___, 142 S. Ct. at 1318.

This means that most arbitration enforcement actions should be brought in state court, not federal court. Practitioners should review the relevant state law on arbitration to review the processes and grounds for confirmation, vacation, and modification.