US Supreme Court Upholds Arbitrators Authority to Decide the Validity of a Non-Compete Clause in an Arbitration Agreement

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The US Supreme Court recently vacated a decision by the Oklahoma Supreme Court, holding that the national policy favoring arbitration found in the Federal Arbitration Act ("FAA") and supporting case law, a policy which applies to both state and Federal courts, required that an arbitrator decide in the first instance whether a non-compete clause in a commercial contract was valid. *Nitro-Lift Technologies v. Howard* (Nov. 26, 2012)

The Court acknowledged that questions regarding the validity of an arbitration clause itself may be decided by a court, but questions regarding the validity of a contract which contains an arbitration clause for disputes arising thereunder are to be resolved by an arbitrator in the first instance.

The case involved a dispute under a confidentiality and non-competition agreement between two employees who worked on oil wells for a company that provides services to operators of oil and gas wells.

The decision in *Nitro-Lift* further strengthens the enforceability of arbitration agreements under the FAA and confirms their authority to decide the validity of non-compete clauses.

This occurs against the backdrop of local courts in California experiencing major reductions in funding leading to cutbacks and closures, with more expected to come in 2013. We previously discussed this in Court Closures And The Rise Of Mediation. Court cutbacks and closures will likely increase the time it takes for a case to go to trial and be resolved.

In this environment, arbitration agreements will likely become more prevalent, as businesses and others seek a streamlined method to resolve all manners of civil disputes. The US Supreme Court, in *Nitro-Lift* and other decisions affirming the importance and validity of arbitration agreements under the FAA, will make it easier for parties to do so.

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