### *Supreme Court's Decision*

Circuit City appealed the decision of the Ninth Circuit, and the Supreme Court granted certiorari to resolve the dispute. The Supreme Court reversed, explaining that the Ninth Circuit's broad reading of Section 1 conflicted with Section 2 of the FAA, which requires the judicial enforcement of arbitration agreements "in any . . . contract evidencing a transaction involving commerce," and rendered Section 1's exclusion meaningless. Thus, relying upon rules of statutory construction, the Court held that Section 1's reference to "any other class of workers engaged in foreign or interstate commerce" related only to transportation workers. It rejected out-of-hand the argument that an employment contract is not a "transaction involving commerce" within the meaning of Section 2.

Although the Supreme Court's decision still leaves some open questions (e.g., how broadly courts will define "transportation worker"), its decision recognizes the enforceability of mandatory arbitration clauses in employment contracts. Also, in requiring arbitration of state law claims that were not specifically named in the arbitration clause at issue, the Supreme Court implicitly held that broad arbitration clauses may be sufficient to compel arbitration of a wide range of claims, including statutory claims.

### *Arbitration*

The Supreme Court's decision makes mandatory arbitration programs worthy of serious consideration. Arbitration can offer several advantages to traditional litigation, including greater confidentiality; the possibility of lower legal costs; a limited appeal process; a potential for speedier resolution; elimination of the risks inherent in jury trials; and a potential for less acrimony between the parties than in a litigation.

However, there are potential down sides to the establishment of a mandatory arbitration program. Potential pitfalls may include an increase in the number of employee grievances due to the easy accessibility of such a program; the risk that an outside arbitrator will "split the baby" or not strictly follow the law in resolving the claim; and a limited ability to appeal adverse rulings. In addition, future legislation may prohibit mandatory arbitration programs. Indeed, in recent years Congress has considered bills that would prohibit employers from requiring arbitration as a condition of employment. *See, e.g.,* Civil Rights Procedures Protection Act, H.R. 872 & S. 121 (106th Cong. 1999).

### *What Employers Should Do*

Employers who have not yet done so may want to consider establishing a mandatory arbitration program for employment disputes. If you have any questions about the implications of the *Circuit City* decision or the pros and cons of mandatory arbitration programs, or would like assistance in establishing a mandatory arbitration program, please contact your Proskauer Labor and Employment Law Department attorney or any of the attorneys listed below.

## Has Your Address Changed?

Please let us know if your mailing address needs to be updated. Contact Deborah Chernoff with the correct information either via email: dchernoff@proskauer.com or fax: 212.969.2900. Thank you.

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Client Alert

*A report for clients and friends of the firm*

**March 2001**

*United States Supreme Court holds that the Federal Arbitration Act applies to all contractual agreements between employers and employees to arbitrate employment disputes, except for those involving transportation workers.*

## United States Supreme Court Decision

On March 21, 2001, in *Circuit City Stores, Inc. v. Adams,* the United States Supreme Court ruled in a 5-4 decision that the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1-16, applies to all contractual agreements between employers and employees to arbitrate workplace disputes, except for those involving transportation workers.

### *Background*

In October 1995, Saint Clair Adams applied for employment with Circuit City as a sales counselor in the company's Santa Rosa, California store. Adams signed an employment application which included the following provision:

> I agree that I will settle any and all previously unasserted claims, disputes or controversies arising out of or relating to my application or candidacy for employment, employment and/or cessation of employment with Circuit City, *exclusively* by final and binding *arbitration* before a neutral Arbitrator. By way of example only, such claims include claims under federal, state and local statutory or common law, such as the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act, the law of contract and the law of tort. (emphasis in original).

Circuit City ultimately hired Adams. Two years later, Adams filed an employment discrimination lawsuit against Circuit City in California state court, asserting claims under California's Fair Employment and Housing Act, Cal. Govt. Code Ann. § 12290 et seq. (West 1992 and Supp. 1997), and other claims based on general tort theories under California law. Relying upon the arbitration clause in Adams' employment application, Circuit City filed suit in the United States District Court for the Northern District of California, seeking to enjoin the state court action and to compel arbitration of Adams' claims pursuant to the FAA. The district court entered the requested order, holding that the arbitration clause in the employment application obligated Adams to submit his claims against Circuit City to binding arbitration.

On appeal, the United States Court of Appeals for the Ninth Circuit reversed, holding that the arbitration clause was not enforceable under the FAA because it was a contract of employment. 194 F.3d 1070 (1999). This holding was contrary to those of nine other circuit courts, which had held that arbitration agreements in the employment context generally are enforceable except when involving transportation workers. In reaching its minority holding, the Ninth Circuit applied an expansive reading of Section 1 of the FAA, which excludes from coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."