

# Denial of Motion to Compel Arbitration Under the FAA Results in Stay of Case Upon Appeal

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## Related Professionals

Cheryl D. Shoun  
843.720.1762  
cshoun@maynardnexsen.com

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Generally, an appeal confers jurisdiction upon the court of appeals while simultaneously divesting the district court of its jurisdiction over aspects of the case involved in the appeal. In a succinct opinion, the United States District Court recently examined that general rule in the context of an appeal from an order denying arbitration. *Berkeley County School District v. HUB International Limited, et al*, 2019 WL 2233145 (May 23, 2019).

In the instant matter, HUB filed a motion to compel arbitration. The district court denied HUB's motion, following which HUB appealed to the Fourth Circuit. This case came before the court on HUB's motion to stay this action pending appeal.

Section 16(a)(1)(B) of the Federal Arbitration Act (FAA) provides a party may appeal the denial of its motion to compel arbitration pursuant to 9 U.S.C. §4. Previously recognizing a circuit split on whether the general rule applicable to appeals applies to such circumstance, the Fourth Circuit adopted the majority rule, finding an appeal regarding arbitrability of claims divests the district court of jurisdiction over those claims, assuming the appeal is not frivolous. Because the core of an arbitrability appeal is the disputed continuation of the claims before the district court, that court necessarily lacks jurisdiction of proceedings relative to the claims at issue.

Here, Plaintiff argues the general rule is inapplicable as the issue in the case is as to the scope of the arbitration clause, not as to whether there is an enforceable arbitration provision. The FAA does not make that distinction. Rather, the FAA provides for an appeal of the denial of a petition seeking an order to arbitrate under Section 4. Thus, the district court is bound by the Fourth Circuit's precedent absent a controlling holding by the United States Supreme Court or a subsequent opinion of the Fourth Circuit overruling its previous holding.<sup>[1]</sup>

The court acknowledged it may refuse to stay a case pending appeal of an order denying arbitration if that appeal is frivolous. Without precise guidance as to the meaning of frivolous, the court considered the common application – an appeal is frivolous when none of the legal points is arguable on their merits. Failing to find HUB’s appeal frivolous, the court granted HUB’s motion, staying the case until resolution of the appeal to the Fourth Circuit.

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[1] See *United States v. Collins*, 415 F.3d 304 (4th Cir. 2005).

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*Cheryl D. Shoun is a trial attorney and certified mediator whose experience includes construction law, insurance defense, personal injury defense, employment litigation and medical malpractice. As a frequent writer, she serves as editor for Nexsen Pruet's TIPS: Torts, Insurance and Products Blog.*