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Litigator of the Week: M. Miller Baker of McDermott Will & Emery

By Andrew Longstreth

We'll be honest. Talking about the rights of nonparties to an arbitration agreement under the Federal Arbitration Act doesn't exactly get our juices flowing, but as our Litigator of the Week explained to us Thursday, it's a huge issue. "It is a technical question, but it's of widespread significance in arbitration practice," said M. Miller Baker of McDermott Will & Emery. "There are dozens of reported cases involving nonparties."

Thanks to Miller, the rights of those nonparties have now been clarified. On Monday, Baker won a 6-to-3 victory at the U.S. Supreme Court in Arthur Andersen v. Carlisle. The Court reversed a decision by the U.S. Court of Appeals for the Sixth Circuit, which had ruled that only signatories to an arbitration agreement could appeal the denial of a motion to compel arbitration. The Supreme Court disagreed, finding that a nonparty simply needs to make a motion--either to stay a proceeding or to compel arbitration under the FAA--to receive appellate review.

"The court clarified and gave a very clean and crisp test for appellate jurisdiction, eliminating widespread confusion in the courts of appeals," said Baker, who represented Andersen.

Interestingly, one of the judges who contributed to the now resolved confusion was Chief Justice John Roberts. When he was on the D.C. Circuit, he authored an opinion on the issue, which the Sixth Circuit adopted wholesale in the ruling Andersen sought to overturn. Baker, in other words, had to figure out a way to convince the chief justice (or at least five of his colleagues) that Roberts was, um, wrong.

So how, we asked, did Baker address the chief?

"Carefully," he said. "We respectfully disagreed with him....We think [his previous opinion] was inconsistent with the text of the statute, and six members of the court agreed." (But not, for the record, Roberts, who joined Justices Souter and Stevens in the dissent.)

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