

Andrew S. Berns Quoted In Law360 Article, "Judge Pushes To Update Arbitration Law For 21st Century"

As published by [Law360](#), September 24, 2021

By Jeannie O'Sullivan

A Third Circuit judge has sent a strong signal that it's time for Congress to revamp a 96-year-old federal law's provision freeing certain transportation workers from workplace arbitration clauses, given that it lags behind in the era of phone app-based delivery work generated by Big Tech's growing footprint.

Judge Matey's majority opinion remanded Amazon's arbitration bid to New Jersey district court to determine if the arbitration clause at issue is enforceable under state law, reasoning that it made sense to answer that question before delving into the discovery required to determine the scope of Section 1 as it applies to Harper.

In addition to the majority and concurrence, the decision included a dissent by U.S. Circuit Judge Patty Shwartz, who felt the district court followed the correct sequence in examining the Section 1 exemption before considering state law.

[Einhorn Barbarito Frost & Botwinick PC](#) partner [Andrew S. Berns](#), chair of the firm's commercial litigation and employment practices, considers the concurrence to mark the "most thorough analysis" of Section 1 that he's seen in a long time, and only one of the few decisions containing a majority and concurrence by the same judge that he's encountered during his 35-year career.

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