

**THE SHORT SHELF-LIFE OF *ONVOY, INC. V. SHAL, LLC*:
WHAT REMAINS OF THE MINNESOTA SUPREME
COURT RULING AFTER *BUCKEYE CHECK
CASHING, INC. V. CARDEGNA*?**

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In 2003, the Minnesota Supreme Court cleared up any ambiguity regarding the application of the Federal Arbitration Act (FAA)¹ in Minnesota state courts, but also waded into untested water (at least in Minnesota) regarding whether allegations that a contract was void must be arbitrated.² In a decision that sought to retain some power for state law and state courts within the highly deferential federal arbitration framework, the Minnesota Supreme Court in *Onvoy, Inc. v. SHAL, LLC*³ sided with a few federal circuit courts⁴ and held that litigants who allege that their contracts are void may initially ignore the arbitration clauses included in those

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1. 9 U.S.C. §§ 1–16 (2000).

2. *See* *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344 (Minn. 2003).

3. *Id.*

4. *See infra* Part I (discussing these cases).

contracts.⁵ But just two-and-one-half years later, the United States Supreme Court declared that the space Minnesota had attempted to claim as the province of state law had already been annexed by the FAA and the Supreme Court interpretation of the FAA.⁶ This article will explore what remains of the *Onvoy* decision.

First, understanding *Onvoy*'s context requires a brief introduction to the federal severability doctrine and the case law interpreting it.

I. *PRIMA PAINT* AND THE CIRCUITS' ATTEMPTS TO NARROW IT

The FAA provides that a party aggrieved by the failure of another to arbitrate may petition a United States district court and "upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration."⁷ Under federal precedent, there is a strong presumption of arbitrability, and doubts about the scope of arbitrable issues are resolved in favor of arbitration.⁸ The cases covered in this article discuss whether the threshold issue regarding the enforceability of an arbitration agreement must also be heard by an arbitrator or whether, in some instances, it can be heard by a court.

In 1967, the United States Supreme Court decided in *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.*⁹ that a party resisting arbitration could not obtain a court hearing on all the issues by asserting that the party had been fraudulently induced to enter into the contract containing the arbitration provision.¹⁰ Instead, the Supreme Court introduced what has since been termed the "severability doctrine," under which the arbitration clause of a contract is essentially considered separately from the

5. *Onvoy*, 669 N.W.2d at 354.

6. See *infra* Part III (discussing *Buckeye Check Cashing, Inc. v. Cardegna*, 126 S. Ct. 1204 (2006)).

7. 9 U.S.C. § 4 (2000).

8. E.g., *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24–25 (1983) (noting that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration" and "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability").

9. 388 U.S. 395 (1967).

10. *Id.* at 403–04.

remainder of the contract.¹¹ Only if the arbitration clause itself can be attacked—such as, if a party was fraudulently induced to *agree to arbitration*—may a court entertain the issue of arbitrability under the *Prima Paint* decision.¹² The Supreme Court used broad language in holding “therefore, that in passing upon a [9 U.S.C.] § 3 application for a stay while the parties arbitrate, a federal court may consider only issues relating to the making and performance of the agreement to arbitrate.”¹³

In the 1990s and early 2000s, some courts balked at the rigidity of the severability doctrine. The Ninth Circuit confronted a case in 1991 in which California municipalities sought to avoid the arbitration clause in each of their agreements with a securities company by alleging that the individual who signed the agreements on behalf of the municipalities lacked authority to bind them.¹⁴ The Ninth Circuit allowed the municipalities to make their argument in court. The court limited the application of *Prima Paint* to “challenges seeking to *avoid* or *rescind* a contract” and conversely found that the severability doctrine did not apply to “challenges going to the very existence of a contract.”¹⁵ The court summarized its distinction by stating that *Prima Paint* applies to “voidable” contracts.¹⁶

The Third Circuit later explicitly addressed which types of complaints regarding a contract’s enforceability would be allowed to stay arbitration under the FAA in *Sandvik AB v. Advent International Corp.*¹⁷ In *Sandvik*, the two parties had executed a joint venture agreement with a mandatory arbitration clause.¹⁸ But less than three months after the agreement was signed, Advent notified Sandvik that the individual who signed the agreement for Advent had done so without authority and that Advent, therefore, would not abide by its terms.¹⁹ Sandvik brought suit for breach of contract, and Advent moved to compel arbitration.²⁰ The Third Circuit noted a potential conflict in this case between the federal

11. *See id.*

12. *Id.*

13. *Id.* at 404.

14. *Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1138 (9th Cir. 1991).

15. *Id.* at 1140.

16. *Id.*

17. 220 F.3d 99 (3d Cir. 2000).

18. *Id.* at 101.

19. *Id.*

20. *Id.* at 101–02.

rule that “a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit”²¹ and the severability doctrine of *Prima Paint*.²² Because Sandvik did not raise an issue that went “to the making and performance of the agreement to arbitrate,” as required by *Prima Paint*,²³ a plain reading of Supreme Court precedent suggested Sandvik and Advent would have to arbitrate.

The Third Circuit resolved the potential conflict by “conclud[ing] that the doctrine of severability presumes an underlying, existent, agreement.”²⁴ After citing approvingly to the *Three Valleys Municipal Water District v. E.F. Hutton & Co.*²⁵ decision out of the Ninth Circuit, the Third Circuit “dr[e]w a distinction between contracts that are asserted to be ‘void’ or non-existent . . . and those that are merely ‘voidable,’ as was the contract at issue in *Prima Paint* [sic], for purposes of evaluating whether the making of an arbitration agreement is in dispute.”²⁶ Having set out that framework, the court affirmed the district court’s denial of a motion to compel arbitration because the agent’s lack of authority voided the agreement.²⁷

The Second Circuit addressed a similar set of facts just a year after the *Sandvik* decision in *Sphere Drake Insurance Ltd. v. Clarendon National Insurance Co.*²⁸ In that case, Sphere Drake, a reinsurance company, authorized Euro International Underwriting to accept business on its behalf.²⁹ Euro then entered into six reinsurance contracts in 1997 and 1998, under which Sphere Drake reinsured workers’ compensation insurance policies issued by Clarendon.³⁰ More than a year after the last contracts were executed, Sphere Drake contacted Clarendon and attempted to nullify the contracts, alleging that Euro never should have entered into them.³¹ There was an arbitration clause in each contract, and after Clarendon demanded arbitration, Sphere Drake brought an action in district

21. *Id.* at 105 (quoting *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 648 (1986)).

22. *Sandvik*, 220 F.3d at 105.

23. *Id.* (quoting *Prima Paint*, 388 U.S. at 404).

24. *Sandvik*, 220 F.3d at 106.

25. 925 F.2d 1136 (9th Cir. 1991).

26. *Sandvik*, 220 F.3d at 107.

27. *Id.* at 111–12.

28. 263 F.3d 26 (2d Cir. 2001).

29. *Id.* at 28.

30. *Id.*

31. *Id.*

court seeking a declaration that the contracts were void.³² Sphere Drake contended that Euro breached its fiduciary duty by failing to evaluate the reasonableness of the risks and, therefore, executed contracts that were “economically disastrous” for Sphere Drake.³³ Sphere Drake argued that the contracts were void because the agent acted outside the scope of its agency, and the opposing party was aware that the agent was acting outside of its authority.³⁴

In analyzing whether Sphere Drake had to arbitrate, the Second Circuit noted that “the party putting the agreement to arbitrate in issue must present ‘some evidence’ in support of its claim before a trial is warranted.”³⁵ In addition, it said that *Prima Paint* can only be harmonized with cases saying that there *must* be an agreement to arbitrate before it can be enforced by recognizing “the distinction between void and voidable contracts.”³⁶ The Second Circuit held that “[i]f a party alleges that a contract is void and provides some evidence in support, then the party need not specifically allege that the arbitration clause in that contract is void, and the party is entitled to a trial on the arbitrability issue.”³⁷ Applying its interpretation of *Prima Paint*, the Second Circuit found that Sphere Drake had only asserted evidence to suggest that one of the six reinsurance contracts was void.³⁸ Sphere Drake only offered evidence that Clarendon’s agent *knew* Euro was exceeding its authority on one contract, not all six, so a trial was warranted about the enforceability of only that one arbitration clause.³⁹

At this point, after at least three circuit courts had endorsed the “void/voidable” distinction with respect to *Prima Paint*’s application, the Minnesota Supreme Court had occasion to address that issue in *Onvoy*.

II. THE MINNESOTA SUPREME COURT’S ENDORSEMENT OF THE VOID/VOIDABLE DISTINCTION IN *ONVOY V. SHAL*

*Onvoy, Inc. v. SHAL, LLC*⁴⁰ forced the Minnesota Supreme Court to confront the overlap between state and federal arbitration

32. *Id.*

33. *Id.* at 29.

34. *Id.* at 33.

35. *Id.* at 30.

36. *Id.* at 31.

37. *Id.* at 32.

38. *Id.*

39. *Id.* at 32–33.

40. 669 N.W.2d 344 (Minn. 2003).

law—something the court had not done in over two decades. In overturning decisions from 1972 and 1982 regarding the application of the Minnesota Arbitration Act,⁴¹ *Onvoy* clarified that the FAA⁴² “applies to all transactions that involve or affect interstate commerce.”⁴³ That leaves very few transactions governed by the Minnesota Arbitration Act:⁴⁴ only those involving goods, labor and supplies, exclusively from Minnesota, with only Minnesota participants in the transaction. Even then, a clever litigator could still argue for the application of federal law by showing how a provincial transaction “affects” interstate commerce.⁴⁵ In addition to the applicability of the FAA, the substantive federal law of arbitration also applies in Minnesota state courts.⁴⁶

The critical aspects of *Onvoy* remain unchanged: Minnesota courts must apply, with rare exception, the FAA and the federal law interpreting it to disputes over the enforcement of arbitration clauses. The more groundbreaking and interesting aspects of *Onvoy*, however, involved the void/voidable distinction regarding the enforceability of arbitration clauses. The issue in *Onvoy* was the impact of *Onvoy*’s arguments that its contract with SHAL was void *ab initio* due to claims that the contract had been entered into *ultra vires* and by interested directors.⁴⁷ The Minnesota Supreme Court adopted the reasoning of the Third Circuit in *Sandvik*,⁴⁸ such adoption recognizing the unfairness of forcing parties to adhere to any provision of a void contract—even the arbitration provision.⁴⁹ Following *Sandvik*, the Minnesota Supreme Court in *Onvoy*

41. MINN. STAT. §§ 572.08–.30 (2006).

42. Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2000).

43. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003) (citing *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 271-72 (1995)).

44. MINN. STAT. §§ 572.08–.30.

45. This argument would be made using commerce clause cases like *Wickard v. Filburn*, 317 U.S. 111 (1942), which held that legislation restricting the uses of even small amounts of home-grown wheat by farmers for local consumption could impact interstate commerce. *Id.* at 127–29. A more recent example of this is *Gonzales v. Raich*, 545 U.S. 1 (2005), in which the Supreme Court held that the Controlled Substances Act could be constitutionally applied even to marijuana grown by the intended user in a state where medical marijuana use is legal. *Id.* at 20–33.

46. *Onvoy*, 669 N.W.2d at 351 n.4 (citing *Allied-Bruce*, 513 U.S. at 272).

47. *Id.* at 347.

48. *Sandvik AB v. Advent Int’l Corp.*, 220 F.3d 99, 106–08 (3d Cir. 2000).

49. *Onvoy*, 669 N.W.2d at 354 (holding that “parties may not be compelled to arbitrate claims if they have alleged that the contract at issue never legally existed”).

declared that “allegations that a contract is void may be heard by a court, even if not specifically directed to the arbitration clause, while allegations that a contract is voidable must be sent to arbitration.”⁵⁰ The void/voidable distinction implicates state law because contract interpretation is governed by state, not federal, law.⁵¹

Applying those legal holdings to the facts of *Onvoy*, the Minnesota Supreme Court decided that Onvoy’s claim that the contract was entered into without authority was not sufficient to make the contract void.⁵² Minnesota law recognizes two types of *ultra vires* contracts: under the first, the contract will always be outside the scope of the corporation’s power; under the second, the contract is generally within the corporation’s power, but the power was defectively exercised in that particular instance.⁵³ Onvoy’s claim was of the second type—an allegation that the board of directors had not properly followed protocol in approving the contract—and was, therefore, not automatically void in the opinion of the Minnesota Supreme Court.⁵⁴ Onvoy’s second claim, that the individuals who negotiated the contract engaged in self-dealing because they had close associations with SHAL, is governed by Minnesota Statutes section 302A.255.⁵⁵ The statute creates the possibility that a transaction is void due to self-dealing, but also sets out four safe harbor provisions for accused parties.⁵⁶ Therefore, the Minnesota Supreme Court remanded to the district court to determine whether the contract was void as a result of an interested-director decision that was not excused by any of the safe harbor provisions.⁵⁷

In the course of its decision, the Minnesota Supreme Court expressed unease with federal law on arbitration.⁵⁸ In footnote six of the decision, the court cited a number of critiques of the federal policy favoring arbitration and noted that its new rule “allowing courts to retain jurisdiction over credible claims that a contract is

50. *Id.*

51. *Id.*

52. *Id.* at 355.

53. *Id.* at 354–55 (citing *Bell v. Kirkland*, 102 Minn. 213, 218, 113 N.W. 271, 273 (1907)).

54. *Id.* at 355.

55. *Id.*

56. *Id.* at 355–56.

57. *Id.* at 356.

58. *See id.* at 352.

void[] leaves room for consumers to escape obvious abuses of power in contracting.”⁵⁹ The unease was more pronounced in the concurrence of Justice Paul Anderson, who wrote about his “concerns regarding the potential for abuse of power when parties with unequal bargaining power contract to arbitrate their disputes.”⁶⁰ In particular, he expressed concern about individuals waiving the right to a jury trial by agreeing to arbitration.⁶¹

Justice Gilbert also wrote separately (dissenting in part) to criticize the case law implementing the Federal Arbitration Act.⁶² He said the statute “lends too much power to an arbitration system that does not properly account for impartiality and a lack of legal oversight.”⁶³ Because he thought federal law was headed in the wrong direction, Justice Gilbert wanted Minnesota courts to “be vigilant to preserve and improve Minnesota’s ADR system . . . and . . . not be so eager to defer to the federal system unless clearly required under federal law.”⁶⁴

Because of the policy statements from the Minnesota Supreme Court suggesting concerns about state courts automatically sending all parties to arbitration, the court’s decision to adopt the void/voidable distinction can be seen in part as an attempt to retain some power for state courts and lawmakers over who must arbitrate. In a decision that acknowledges that Minnesota’s own arbitration statute is rendered nearly impotent by the FAA, but that expresses concern about the knee-jerk federal policy in favor of arbitration, the court adopts the void/voidable distinction as an exercise in drawing a line in the sand to demarcate a space for state law on arbitration.⁶⁵ Indeed, given the legal framework created by the United States Supreme Court, the void/voidable distinction may be the only vehicle for safeguarding Minnesota citizens from a federal judiciary that could be called overzealous in its preference for arbitration.

59. *Id.* at 352 n.6.

60. *Id.* at 357 (Anderson, J., concurring).

61. *Id.*

62. *See id.* at 359 (Gilbert, J., concurring in part, dissenting in part).

63. *Id.*

64. *Id.*

65. *See Onvoy*, 699 N.W.2d at 344–59.

III. *BUCKEYE CHECK CASHING* REAFFIRMS *PRIMA PAINT* AND REJECTS THE VOID/VOIDABLE DISTINCTION

Last year, the United States Supreme Court decided whether a claim that a contract containing an arbitration provision was void for illegality should go to the arbitrator or be heard by a district court.⁶⁶ In *Buckeye Check Cashing, Inc. v. Cardegna*,⁶⁷ a putative class of plaintiffs entered into deferred-payment transactions with Buckeye Check Cashing, and their agreements all contained arbitration provisions.⁶⁸ The plaintiffs sued in Florida state court alleging that the agreements violated Florida lending and consumer-protection statutes.⁶⁹ Buckeye responded by moving to compel arbitration.⁷⁰ The Florida Supreme Court refused to compel arbitration because it worried that enforcing the arbitration clause of an illegal contract “could breathe life into a contract that not only violates state law, but also is criminal in nature.”⁷¹

In a brief opinion, the United States Supreme Court reversed the Florida high court, rejecting the void/voidable distinction and standing firmly on *Prima Paint*.⁷² The Court repeated three fundamental propositions on arbitration: 1) an arbitration clause can be severed from the balance of the contract; 2) “unless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator in the first instance;” and 3) these rules apply in state and federal courts.⁷³ After noting that the Florida Supreme Court relied on the conclusion that the assertions of illegality would render the Buckeye agreements void, the Court said unambiguously: “*Prima Paint* makes this conclusion irrelevant. That case rejected application of state severability rules to the arbitration agreement *without discussing* whether the challenge at issue would have rendered the contract void or voidable.”⁷⁴ The Court emphasized

66. *Buckeye Check Cashing, Inc., v. Cardegna*, 126 S. Ct. 1204 (2006).

67. *Id.*

68. *Id.* at 1207.

69. *Id.*

70. *Id.*

71. *Id.* (quoting *Buckeye Check Cashing, Inc., v. Cardegna*, 894 So. 2d 860, 862 (Fla. 2005)).

72. *Id.* at 1208–11 (2006) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967)).

73. *Id.* at 1209.

74. *Id.* (citing *Prima Paint*, 388 U.S. at 400–04).

that federal substantive law is applicable in state courts and that its arbitration precedent had rejected the view that the severability doctrine could be altered by state law.⁷⁵

The Supreme Court also addressed the respondents' argument that, since section 2 of the FAA⁷⁶ limits the FAA's application to "contracts," it is explicitly presumed that a valid contract exists.⁷⁷ Justice Scalia, writing for the Court, refused to "read 'contract' so narrowly."⁷⁸ Considering all the uses of the term "contract" in section 2, the Court concluded that the term "must include contracts that later prove to be void."⁷⁹

Interestingly, however, the Court did include a footnote that gave credence to the logical argument that someone should not have to abide by an arbitration clause in a contract that never existed:

The issue of the contract's validity is different from the issue of whether any agreement between the alleged obligator and obligee was ever concluded. Our opinion today addresses only the former, and does not speak to the issue decided in the cases cited by respondents . . . which hold that it is for courts to decide whether the alleged obligator ever signed the contract, whether the signor lacked authority to commit the alleged principal, and whether the signor lacked the mental capacity to assent.⁸⁰

Among other cases, the Court cited to both *Sandvik*⁸¹ and *Sphere Drake*⁸² in the footnote.⁸³ Despite its strong language in the opinion dismissing the void/voidable distinction created by lower courts, the Court in footnote one recognizes (but does not address) that there may be instances in which a party's challenge to the *contract as a whole* can be heard by the courts.⁸⁴ But if those instances exist, the Court apparently thinks they are very narrow.

The Supreme Court's holding, read together with the footnote, suggests that the Court rejected the void/voidable

75. *Id.* at 1208–09.

76. Federal Arbitration Act, 9 U.S.C. §§ 1–16 (2000).

77. *Buckeye Check Cashing*, 126 S. Ct. at 1209–10.

78. *Id.* at 1210.

79. *Id.*

80. *Id.* at 1208 n.1 (internal citations omitted).

81. *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99 (3d Cir. 2000).

82. *Sphere Drake Ins. Ltd. v. All Am. Ins. Co.*, 256 F.3d 587 (7th Cir. 2001).

83. *Buckeye Check Cashing*, 126 S. Ct. at 1208 n.1.

84. *Id.*

distinction because the legal term “void” encompasses a greater universe of cases than the Supreme Court thinks should be heard by a court under the FAA. The instances in which a contract is void, or of no effect, are defined by state contract law and can include those that are against public policy, like that in *Buckeye*. But Justice Scalia seems more sympathetic toward contracts that are null and void because there never was a meeting of the minds. The Supreme Court appears to be deferring for another day its decision on whether an assertion that the party never assented to the contract containing the arbitration clause, or that the signor lacked authority, should be determined by an arbitrator.

Where, then, would the claims that Onvoy made regarding why its contract was void fall—on the “clearly arbitrable” side of the line drawn by the United States Supreme Court (along with illegality), or on the “we’ll decide another day” side of the line? Onvoy’s claims that its contract was entered into *ultra vires*, or beyond the scope of authority, seem clearly analogous to the claim in *Sphere Drake* that Sphere Drake’s agents acted outside their authority.⁸⁵ Given that *Sphere Drake* was one of the cases cited in footnote one of the *Buckeye* decision, an *ultra vires* claim (which the Minnesota Supreme Court found could be heard by a court) appears still up for discussion. This type of claim is, accordingly, on the “decide another day” side of the line.

Onvoy’s second argument, that its contract was entered into by interested directors,⁸⁶ straddles the line and illustrates how little clarity the Supreme Court provided in the *Buckeye* decision about the types of allegations impacting an entire contract that deserve a court hearing. Unlike the cases in which the principal did not assent to an agreement, the nullifying of a contract entered into by interested directors is primarily a public policy determination of the legislature. As such, this argument could be an “illegality” argument that falls on the “clearly arbitrable” side of the line reaffirmed by the Supreme Court in *Buckeye*. But to the extent that self-dealing is also a breach of fiduciary duty and an activity that falls outside of an agent’s authority, Onvoy’s second argument could also be analogized to *Sphere Drake* and fall on the “decide another day” side of *Buckeye*.

85. See *Sphere Drake*, 256 F.3d at 588; *Onvoy*, 669 N.W.2d at 354–55.

86. See *Onvoy*, 669 N.W.2d at 355–56.

IV. HOW MINNESOTA COURTS AND LITIGATORS MAY PROCEED

Given this current framework, what space can a Minnesota court legitimately claim as open for deciding the enforceability of an arbitration clause? How can a litigator best argue that an arbitration clause is either ineffective or must be enforced?

Armed with the *Buckeye* decision,⁸⁷ a party favoring arbitration in state court may argue that the *Onvoy* decision⁸⁸ has been effectively overruled. A close read of both decisions, however, indicates that there is still some gray area that the Supreme Court intentionally did not address. If a court finds that no “agreement between the alleged obligor and obligee was ever concluded,”⁸⁹ the court may refuse a motion to compel arbitration and instead hold a trial on the enforceability of the arbitration clause.

The courts have not been given much direction on which circumstances indicate that no agreement was concluded. A safe bet, however, is that a party will include an argument that the signature on the contract containing the arbitration provision was forged, the person signing the contract lacked authority, the person signing clearly *exceeded* his or her authority, or the person signing was a minor or was otherwise legally incapable of consenting. There are probably dozens of scenarios similar to those just delineated that will require courts and litigators to make analogies and closely parse the few words of the United States Supreme Court.

For litigators attempting to compel arbitration, the key will be to hammer home *Buckeye*'s affirmation of *Prima Paint* and to state that, unless the alleged impropriety goes to the arbitration clause itself, courts should compel arbitration. For litigators arguing for a court hearing on the enforceability of the arbitration clause, the key will be to fit themselves into the first footnote of *Buckeye*⁹⁰ by analogizing their situations to those of *Sandvik*⁹¹ and *Sphere Drake*.⁹²

In any case, it is evident that the void/voidable distinction is no longer a valid test of the enforceability of a contract containing an arbitration clause. The United States Supreme Court struck down that bright-line rule and replaced it with the murky test of

87. *Buckeye Check Cashing*, 126 S. Ct. at 1204.

88. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344 (Minn. 2003).

89. *Buckeye Check Cashing*, 126 S. Ct. at 1208 n.1.

90. *Id.*

91. *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99 (3d Cir. 2000).

92. *Sphere Drake Ins. Ltd. v. All Am. Ins. Co.*, 256 F.3d 587 (7th Cir. 2001).

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“whether any agreement . . . was ever concluded.”⁹³ While the Court’s decision was meant to narrow the situations in which a party to a contract calling for arbitration could be heard in court, it is still not clear which allegations are sufficient to entitle a litigant to a court hearing. This is not exactly bad news for the Minnesota Supreme Court, to the extent that the justices still have concerns about sending some types of would-be litigants to arbitration, because the United States Supreme Court left room within footnote one for state courts to apply their own contract law and determine “whether any agreement . . . was ever concluded”⁹⁴ between the two parties to the alleged arbitration clause. Therefore, the void/voidable rule enunciated in *Onvoy, Inc. v. SHAL, LLC*⁹⁵ is no longer valid. That does not, however, mean the Minnesota Supreme Court cannot use it generally as precedent to mandate court trials in cases in which one party to an arbitration clause alleges a fundamental problem with the contract as a whole.

93. *Buckeye Check Cashing*, 126 S. Ct. at 1208 n.1.

94. *Id.*

95. 669 N.W.2d 344 (Minn. 2003).