

## Insights



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### Why High Court's Schein Decision Is Dangerous For Debtors

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The policies and objectives underlying bankruptcy and arbitration laws are not easily reconcilable. To make matters more complex, these bodies of law are constantly changing, and, at times, in conflicting ways. In recent years, the courts have reformed and solidified their acceptance of arbitration, which now enjoys almost unfettered acceptance as a form of dispute resolution.

This solidification became more pronounced on Jan. 8, 2019, when the [United States Supreme Court](#) issued its opinion in *Henry Schein Inc. v. Archer and White Sales Inc.*,<sup>[1]</sup> in which the court struck down an exception that had allowed courts to decide whether a claim belongs in arbitration. In so doing, the court has further defined the allocation of power between arbitral tribunals and courts by eliminating a ground by which parties could seek to avoid arbitration.

Before turning to the Supreme Court's decision in *Schein*, discussion of the current state of the law is warranted.

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