

## Insights



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### **A Circuit Split on a Question of Federal Jurisdiction**

*When seeking to confirm or vacate an arbitration award, is federal question jurisdiction to be determined from the face of the petition, or may a district court “look through” the petition and consider the nature of the underlying dispute?*

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#### **Introduction**

Arbitration is a popular forum for dispute resolution, but enforcement of an arbitration award may require that it be confirmed by a court in the form of a judgment. The Federal Arbitration Act (FAA), provides in 9 U.S.C. § 9, that parties may specify the court in which a petition to confirm shall be filed, or if they do not, “then such application may be made to the United States court in and for the district within which such award was made.”<sup>2</sup> Sections 10 and 11, governing petitions to vacate or to modify an award, also refer only to “the United States court in and for the district wherein the award was made. . . .” But neither the parties’ agreement nor the FAA statutes can guarantee that a federal district court will have federal question jurisdiction to confirm, vacate, or modify an arbitration award.

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Notably, parties to an arbitration are free to agree to seek to confirm or vacate an award in state courts, thus, avoiding issues of federal jurisdiction. However, because the FAA does not itself confer federal jurisdiction, federal district courts have jurisdiction to entertain petitions brought under the Act only if an independent basis for federal jurisdiction exists. In that regard, the FAA has been called “something of an anomaly” in the realm of federal legislation, because it bestows no federal jurisdiction but rather requires for access to a federal forum an independent jurisdictional basis over the parties’ dispute.<sup>3</sup> A conflict between the circuits has arisen as to whether federal question jurisdiction should be determined from the face of a petition brought under the FAA—similar to any complaint brought in federal court—or whether, in this context, courts should “look through” the petition to the underlying controversy in arbitration.

The conflict arises from *Vaden v. Discover Bank*, 556 U.S. 49 (2009), which construed § 4 of the FAA, governing petitions to compel arbitration. Based on the unique language of that statute, the majority of a divided Court held that district courts may “look through” a petition to compel arbitration and consider the nature of the underlying dispute when deciding if federal question jurisdiction exists. However, the federal circuit courts of appeals are divided as to whether *Vaden’s* “look through” approach also applies to petitions brought under other sections of the FAA, §§ 9-11 petitions to *confirm*, *vacate*, or *modify* arbitration awards.<sup>4</sup>

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