SUPREME COURT OF THE UNITED STATES

No. 93–1001

ALLIED-BRUCE TERMINIX COMPANIES, INC., AND TERMINIX INTERNATIONAL COMPANY, PETITIONERS *v.* G. MICHAEL DOBSON ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

[January 18, 1995]

JUSTICE BREYER delivered the opinion of the Court.

This case concerns the reach of §2 of the Federal Arbitration Act. That section makes enforceable a written arbitration provision in "a contract *evidencing* a transaction *involving* commerce." 9 U. S. C. §2 (emphasis added). Should we read this phrase broadly, extending the Act's reach to the limits of Congress' Commerce Clause power? Or, do the two underscored words— "involving" and "evidencing"— significantly restrict the Act's application? We conclude that the broader reading of the Act is the correct one; and we reverse a State Supreme Court judgment to the contrary.

In August 1987 Steven Gwin, a respondent, who owned a house in Birmingham, Alabama, bought a lifetime "Termite Protection Plan" (Plan) from the local office of Allied-Bruce Terminix Companies, a franchise of Terminix International Company. In the Plan, Allied-Bruce promised "to protect" Gwin's house "against the attack of subterranean termites," to reinspect periodically, to provide any "further treatment found neces-

sary," and to repair, up to $100,000, damage caused by new
termite infestations. App. 69. Terminix International "guarantee[d] the fulfillment of the terms" of the Plan. *Ibid.* The Plan's contract document provided in writing that

> "*any controversy or claim* . . . arising out of or relating to the interpretation, performance or breach of any provision of this agreement *shall be settled exclusively by arbitration*." *Id.*, at 70 (emphasis added).

In the Spring of 1991 Mr. and Mrs. Gwin, wishing to sell their house to Mr. and Mrs. Dobson, had Allied-Bruce reinspect the house. They obtained a clean bill of health. But, no sooner had they sold the house and transferred the Termite Protection Plan to Mr. and Mrs. Dobson than the Dobsons found the house swarming with termites. Allied-Bruce attempted to treat and repair the house, but the Dobsons found Allied-Bruce's efforts inadequate. They therefore sued the Gwins, and (along with the Gwins, who cross-claimed) also sued Allied-Bruce and Terminix in Alabama state court. Allied-Bruce and Terminix, pointing to the Plan's arbitration clause and §2 of the Federal Arbitration Act, immediately asked the court for a stay, to allow arbitration to proceed. The court denied the stay. Allied-Bruce and Terminix appealed.

The Supreme Court of Alabama upheld the denial of the stay on the basis of a state statute, Ala. Code §8–1–41(3) (1993), making written, predispute arbitration agreements invalid and "unenforceable." 628 So. 2d 354, 355 (Ala. 1993). To reach this conclusion, the court had to find that the federal Arbitration Act, which pre-empts conflicting state law, did not apply to the termite contract. It made just that finding. The court considered the federal Act inapplicable because the connection between the termite contract and interstate commerce was too slight. In the court's view, the Act applies to a contract only if "`at the time [the parties entered into the contract] and accepted the arbitration clause, they *contemplated*

substantial interstate activity.'" *Ibid.* (emphasis in original) (quoting *Metro Industrial Painting Corp.* v. *Terminal Constr. Co.*, 287 F. 2d 382, 387 (CA2) (Lumbard, C. J., concurring), cert. denied, 368 U. S. 817 (1961)). Despite some interstate activities (*e.g.*, Allied-Bruce, like Terminix, is a multistate firm and shipped treatment and repair material from out of state), the court found that the parties "contemplated" a trans-action that was primarily local and not "substantially" interstate.

Several state courts and federal district courts, like the Supreme Court of Alabama, have interpreted the Act's language as requiring the parties to a contract to have "contemplated" an interstate commerce connection. See, *e.g.*, *Burke County Public Schools Bd. of Ed.* v. *Shaver Partnership*, 303 N. C. 408, 417–420, 279 S. E. 2d 816, 822–823 (1981); *R. J. Palmer Constr. Co.* v. *Wichita Band Instrument Co.*, 7 Kan. App. 2d 363, 367, 642 P. 2d 127, 130 (1982); *Lacheney* v. *Profitkey Int'l, Inc.*, 818 F. Supp. 922, 924 (ED Va. 1993). Several federal appellate courts, however, have interpreted the same language differently, as reaching to the limits of Congress' Commerce Clause power. See, *e.g.*, *Foster* v. *Turley*, 808 F. 2d 38, 40 (CA10 1986); *Robert Lawrence Co.* v. *Devonshire Fabrics, Inc.*, 271 F. 2d 402, 406–407 (CA2 1959), cert. dism'd, 364 U. S. 801 (1960); cf. *Snyder* v. *Smith*, 736 F. 2d 409, 417–418 (CA7), cert. denied, 469 U. S. 1037 (1984). We granted certiorari to resolve this conflict, 510 U. S. ___ (1994); and, as we said, we conclude that the broader reading of the statute is the right one.

Before we can reach the main issues in this case, we must set forth three items of legal background.

First, the basic purpose of the Federal Arbitration Act is to overcome courts' refusals to enforce agreements to arbitrate. See *Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior Univ.*, 489 U. S. 468, 474 (1989). The origins of those refusals apparently lie in "`ancient times,'" when the English courts fought "`for extension of jurisdiction—all of them being opposed to anything that would altogether deprive every one of them of jurisdiction.'" *Bernhardt* v. *Polygraphic Co. of America, Inc.,* 350 U. S. 198, 211, n. 5 (1956) (Frankfurter, J., concurring) (quoting *United States Asphalt Refining Co.* v. *Trinidad Lake Petroleum Co.*, 222 F. 1006, 1007 (SDNY 1915) (quoting *Scott* v. *Avery*, 5 H. L. Cas. 811 (1856) (Campbell, L. J.))). American courts initially followed English practice, perhaps just "`stand[ing] . . . upon the antiquity of the rule'" prohibiting arbitration clause enforcement, rather than "`upon its excellence or reason.'" *Bernhardt* v. *Polygraphic Co.*, *supra*, at 211, n. 5 (quoting *United States Asphalt Refining Co., supra,* at 1007). Regardless, when Congress passed the Arbitration Act in 1925, it was "motivated, first and foremost, by a . . . desire" to change this anti-arbitration rule. *Dean Witter Reynolds Inc.* v. *Byrd*, 470 U. S. 213, 220 (1985). It intended courts to "enforce [arbitration] agreements into which parties had entered," *ibid.* (footnote omitted), and to "place such agreements `upon the same footing as other contracts,'" *Volt Information Sciences, Inc., supra,* at 474 (quoting *Scherk* v. *Alberto-Culver Co.*, 417 U. S. 506, 511 (1974)).

Second, some initially assumed that the Federal Arbitration Act represented an exercise of Congress' Article III power to "ordain and establish" federal

courts, U. S. Const., Art. III, §1. See *Southland Corp.* v. *Keating*, 465 U. S. 1, 28, n. 16 (1984) (O'CONNOR, J., dissenting) (collecting cases). In 1967, however, this Court held that the Act "is based upon and confined to the incontestable federal foundations of `control over interstate commerce and over admiralty.'" *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.,* 388 U. S. 395, 405 (1967) (quoting H. R. Rep. No. 96, 68th Cong., 1st Sess., 1 (1924)). The Court considered the following complicated argument: (1) The Act's provisions (about contract remedies) are important and often outcome-determinative, and thus amount to "substantive" not "procedural" provisions of law; (2) *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 71–80 (1938), made clear that federal courts must apply *state* substantive law in diversity cases, see also *Hanna* v. *Plumer*, 380 U. S. 460, 465 (1965); therefore (3) federal courts must not apply the Federal Arbitration Act in diversity cases. This Court responded by agreeing that the Act set forth substantive law, but concluding that, nonetheless, the Act applied in diversity cases because Congress had so intended. The Court wrote: "Congress may prescribe how federal courts are to conduct themselves with respect to subject matter over which Congress plainly has power to legislate." *Prima Paint*, *supra*, at 405.

Third, the holding in *Prima Paint* led to a further question. Did Congress intend the Act also to apply in state courts? Did the Federal Arbitration Act preempt conflicting state anti-arbitration law, or could state courts apply their antiarbitration rules in cases before them, thereby reaching results different from those reached in otherwise similar federal diversity cases? In *Southland Corp.* v. *Keating, supra,* this Court decided that Congress would not have wanted state and federal courts to reach different outcomes about the validity of arbitration in similar cases. The Court concluded that the Federal Arbitration Act pre-

empts state law; and it held that state courts cannot apply state statutes that invalidate arbitration agreements. *Id.*, at 15–16.

We have set forth this background because respondents, supported by 20 state attorneys general, now ask us to overrule *Southland* and thereby to permit Alabama to apply its antiarbitration statute in this case irrespective of the proper interpretation of §2. The *Southland* Court, however, recognized that the pre-emption issue was a difficult one, and it considered the basic arguments that respondents and *amici* now raise (even though those issues were not thoroughly briefed at the time). Nothing significant has changed in the 10 years subsequent to *Southland;* no later cases have eroded *Southland*'s authority; and, no unforeseen practical problems have arisen. Moreover, in the interim, private parties have likely written contracts relying upon *Southland* as authority. Further, Congress, both before and after *Southland*, has enacted legislation extending, not retracting, the scope of arbitration. See, *e.g.*, 9 U. S. C. §15 (eliminating the Act of State doctrine as a bar to arbitration); 9 U. S. C. §§201–208 (international arbitration). For these reasons, we find it inappropriate to reconsider what is by now well-established law.

We therefore proceed to the basic interpretive questions aware that we are interpreting an Act that seeks broadly to overcome judicial hostility to arbitration agreements and that applies in both federal and state courts. We must decide in this case whether that Act used language about interstate commerce that nonetheless limits the Act's application, thereby carving out an important statutory niche in which a State remains free to apply its antiarbitration law or policy. We conclude that it does not.

The Federal Arbitration Act, §2, provides that a

> "written provision in any maritime transaction or *a contract evidencing a transaction involving commerce* to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2 (emphasis added).

The initial interpretive question focuses upon the words "involving commerce." These words are broader than the often-found words of art "in commerce." They therefore cover more than "`only persons or activities *within the flow* of interstate commerce.'" *United States* v. *American Building Maintenance Industries,* 422 U. S. 271, 276 (1975), quoting *Gulf Oil Corp.* v. *Copp Paving Co.*, 419 U. S. 186, 195 (1974) (defining "in commerce" as related to the "flow" and defining the "flow" to include "the generation of goods and services for interstate markets and their transport and distribution to the consumer"); see also *FTC* v. *Bunte Brothers, Inc.,* 312 U. S. 349, 351 (1941). But, how far beyond the flow of commerce does the word "involving" reach? Is "involving" the functional equivalent of the word "affecting?" That phrase—"affecting commerce"—normally signals a congressional intent to exercise its Commerce Clause powers to the full. See *Russell* v. *United States*, 471 U. S. 858, 859 (1985). We cannot look to other statutes for guidance for the parties tell us that this is the only federal statute that uses the word "involving" to describe an interstate commerce relation.

After examining the statute's language, background, and structure, we conclude that the word "involving" is broad and is indeed the functional equivalent of "affecting." For one thing, such an

interpretation, linguistically speaking, is permissible. The dictionary finds instances in which "involve" and "affect" sometimes can mean about the same thing. V Oxford English Dictionary 466 (1st ed. 1933) (providing examples dating back to the mid-nineteenth century, where "involve" means to "include or affect in . . . operation"). For another, the Act's legislative history, to the extent that it is informative, indicates an expansive congressional intent. See, *e.g.*, H. R. Rep. No. 96, 68th Cong., 1st Sess., 1 (1924) (the Act's "control over interstate commerce reaches not only the actual physical interstate shipment of goods but also contracts relating to interstate commerce"); 65 Cong. Rec. 1931 (1924) (the Act "affects contracts relating to interstate subjects and contracts in admiralty") (remarks of Rep. Graham); Joint Hearings on S. 1005 and H. R. 646 before the Subcommittees of the Committees on the Judiciary, 68th Cong., 1st Sess., 7 (1924) (hereinafter Joint Hearings) (testimony of Charles L. Bernheimer, chairman of the Committee on Arbitration of the Chamber of Commerce of the State of New York, agreeing that the proposed bill "relates to contracts arising in interstate commerce"); *id.*, at 16 (testimony of Julius H. Cohen, drafter for the American Bar Association of much of the proposed bill's language, that the Act reflects part of a strategy to rid the law of an "anachronism" by "get[ting] a Federal law to cover interstate and foreign commerce and admiralty"); see also 9 U. S. C. §1 (defining the word "commerce" in the language of the Commerce Clause itself).

Further, this Court has previously described the Act's reach expansively as coinciding with that of the Commerce Clause. See, *e.g.*, *Perry* v. *Thomas*, 482 U. S. 483, 490 (1987) (the Act "embodies Congress' intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause"); *Southland Corp.* v. *Keating*, 465 U. S., at 14–

15 (the "`involving commerce'" requirement is a constitutionally "necessary qualification" on the Act's reach, marking its permissible outer limit); see also *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S., at 407 (Harlan, J., concurring) (endorsing *Robert Lawrence Co.* v. *Devonshire Fabrics, Inc.*, 271 F. 2d 402, 407 (CA2 1959) (Congress, in enacting the FAA, "took pains to utilize as much of its power as it could . . .")).

Finally, a broad interpretation of this language is consistent with the Act's basic purpose, to put arbitration provisions on "the same footing" as a contract's other terms. *Scherk* v. *Alberto-Culver Co.*, 417 U. S., at 511. Conversely, a narrower interpretation is not consistent with the Act's purpose, for (unless unreasonably narrowed to the flow of commerce) such an interpretation would create a new, unfamiliar, test lying somewhere in a no-man's land between "in commerce" and "affecting commerce," thereby unnecessarily complicating the law and breeding litigation from a statute that seeks to avoid it.

We recognize arguments to the contrary: The pre-New Deal Congress that passed the Act in 1925 might well have thought the Commerce Clause did not stretch as far as has turned out to be so. But, it is not unusual for this Court in similar circumstances to ask whether the scope of a statute should expand along with the expansion of the Commerce Clause power itself, and to answer the question affirmatively—as, for the reasons set forth above, we do here. See, *e.g.*, *McLain* v. *Real Estate Bd. of New Orleans, Inc.,* 444 U. S. 232, 241 (1980); *Hospital Building Co.* v. *Trustees of Rex Hospital,* 425 U. S. 738, 743, n. 2 (1976).

Further, the Gwins and Dobsons point to two cases containing what they believe to be favorable language. In *Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344 (1922), and then again in *Leather Workers*

v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457 (1924), they say, this Court said that one might draw a distinction between, on the one hand, cases that "*involve* interstate commerce intrinsically," and, on the other hand, cases "*affecting* interstate commerce so directly as to be within the federal regulatory power." *Mine Workers*, *supra*, at 410 (emphasis added); *Leather Workers*, *supra*, at 470 (same). One could read these cases as driving a wedge between "involve" and "affecting." Yet, in these cases, the Court was not construing a statute containing the words "involving commerce." Furthermore, nothing suggests the drafters of the FAA looked to these cases as a source. And, these cases themselves use the phrase "involve . . . intrinsically," not the word "involving" alone. In sum, these cases do not support respondents' position.

The Gwins and Dobsons, with far better reason, point to a different case, *Bernhardt* v. *Polygraphic Co. of America,* 350 U. S. 198 (1956). In that case, Bernhardt, a New York resident, had entered into an employment contract (containing an arbitration clause) in New York with Polygraphic, a New York corporation. But, Bernhardt "was to perform" that contract after he "later became a resident of Vermont." *Id.*, at 199. This Court was faced with the question whether, in light of *Erie*, a federal court should apply the Federal Arbitration Act in a diversity case when faced with state law hostile to arbitration. *Id.*, at 200. The Court did not reach that question, however, for it decided that the contract itself did not "involv[e]" interstate commerce and therefore fell outside the Act. *Id.*, at 200–202. Since Congress, constitutionally speaking, *could* have applied the Act to Bernhardt's contract, say the parties, how then can we say that the Act's word "involving" reaches as far as the Commerce Clause itself?

The best response to this argument is to point to the way in which the Court reasoned in *Bernhardt*,

and to what the Court said. It said that the *reason* the Act
did not apply to Bernhardt's contract was that there was "*no showing that petitioner* while performing his duties under the employment contract was working `in' commerce, was producing goods for commerce, or *was engaging in activity that affected commerce*, within the meaning of our decisions." *Bernhardt, supra,* at 200–201 (emphasis added) (footnote omitted).

Thus, the Court interpreted the words "involving commerce" as broadly as the words "affecting commerce"; and, as we have said, these latter words normally mean a full exercise of constitutional power. At the same time, the Court's opinion does not discuss the implications of the "interstate" facts to which the respondents now point. For these reasons, *Bernhardt* does not require us to narrow the scope of the word "involving." And, we conclude that the word "involving," like "affecting," signals an intent to exercise Congress's commerce power to the full.

Section 2 applies where there is "a contract *evidencing a transaction* involving commerce." 9 U. S. C. §2 (emphasis added). The second interpretive question focuses on the underscored words. Does "evidencing a transaction" mean only that the transaction (that the contract "evidences") must turn out, *in fact*, to have involved interstate commerce? Or, does it mean more?

Many years ago, Second Circuit Chief Judge Lumbard said that the phrase meant considerably more. He wrote:

> "The significant question . . . is not whether, in carrying out the terms of the contract, the parties *did* cross state lines, but whether, *at the time they entered into it* and accepted the arbitration clause, they *contemplated* substantial interstate

> activity. Cogent evidence regarding their state of mind at the time would be the terms of the contract, and if it, on its face, evidences interstate traffic . . . , the contract should come within § 2. In addition, evidence as to how the parties expected the contract to be performed and how it was performed is relevant to whether substantial interstate activity was contemplated." *Metro Industrial Painting Corp.* v. *Terminal Constr. Co.*, 287 F. 2d 382, 387 (1961) (Lumbard, C. J., concurring) (second emphasis added).

The Supreme Court of Alabama, and several other courts, have followed this view, known as the "contemplation of the parties" test. See *supra*, at 2–3.

We find the interpretive choice difficult, but for several reasons we conclude that the first interpretation ("commerce in fact") is more faithful to the statute than the second ("contemplation of the parties"). First, the "contemplation of the parties" interpretation, when viewed in terms of the statute's basic purpose, seems anomalous. That interpretation invites litigation about what was, or was not, "contemplated." Why would Congress intend a test that risks the very kind of costs and delay through litigation (about the circumstances of contract formation) that Congress wrote the Act to help the parties avoid? See *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 29 (1983) (the Act "calls for a summary and speedy disposition of motions or petitions to enforce arbitration clauses").

Moreover, that interpretation too often would turn the validity of an arbitration clause on what, from the perspective of the statute's basic purpose, seems happenstance, namely whether the parties happened to think to insert a reference to interstate commerce in the document or happened to mention it in an initial conversation. After all, parties to a sales contract with an arbitration clause might naturally

think about the goods sold, or about arbitration, but why should they naturally think about an interstate commerce connection?

Further, that interpretation fits awkwardly with the rest of §2. That section, for example, permits parties to agree to submit to arbitration "an existing controversy arising out of" a contract made earlier. Why would Congress want to risk non-enforceability of this *later* arbitration agreement (even if fully connected with interstate commerce) simply because the parties did not properly "contemplate" (or write about) the interstate aspects of the earlier contract? The first interpretation, requiring only that the "transaction" *in fact* involve interstate commerce, avoids this anomaly, as it avoids the other anomalous effects growing out of the "contemplation of the parties" test.

Second, the statute's language permits the "commerce in fact" interpretation. That interpretation, we concede, leaves little work for the word "evidencing" (in the phrase "a contract evidencing a transaction") to perform, for every contract evidences some transaction. But, perhaps Congress did not want that word to perform much work. The Act's history, to the extent informative, indicates that the Act's supporters saw the Act as part of an effort to make arbitration agreements universally enforceable. They wanted to "get a Federal law" that would "cover" areas where the Constitution authorized Congress to legislate, namely "interstate and foreign commerce and admiralty." Joint Hearings, at 16 (testimony of Julius H. Cohen). They urged Congress to model the Act after a New York statute that made enforceable a written arbitration provision "in a written contract," Act of Apr. 19, 1920, ch. 275, §2, 1920 N. Y. Laws 803, 804. Hearing on S. 4213 and S. 4214 before the Subcommittee of the Senate Committee on the Judiciary, 67th Cong., 4th Sess., 2 (1923) (testimony

of Charles L. Bernheimer). Early drafts made enforceable a written arbitration provision "in *any contract* or maritime transaction *or* transaction involving commerce." S. 4214, 67th Cong., 4th Sess. §2 (1922) (emphasis added); S. 1005, 68th Cong., 1st Sess. (1923); H. R. 646, 68th Cong., 1st Sess. (1924). Members of Congress, looking at that phrase, might have thought the words "any contract" standing alone went beyond Congress's constitutional authority. And, if so, they might have simply connected those words with the later words "transaction involving commerce," thereby creating the phrase that became law. Nothing in the Act's history suggests any other, more limiting, task for the language.

Third, the basic practical argument underlying the "contemplation of the parties" test was, in Judge Lumbard's words, the need to "be cautious in construing the act lest we excessively encroach on the powers which Congressional policy, if not the Constitution, would reserve to the states." *Metro Industrial Painting Corp., supra,* at 386 (Lumbard, C. J., concurring). The practical force of this argument has diminished in light of this Court's later holdings that the Act does displace state law to the contrary. See *Southland Corp.* v. *Keating*, 465 U. S., at 10–16; *Perry* v. *Thomas*, 482 U. S., at 489–492.

Finally, we note that an *amicus curiae* argues for an "objective" ("reasonable person" oriented) version of the "contemplation of the parties" test on the ground that such an interpretation would better protect consumers asked to sign form contracts by businesses. We agree that Congress, when enacting this law, had the needs of consumers, as well as others, in mind. See S. Rep. No. 536, 68th Cong., 1st Sess., 3 (1924) (the Act, by avoiding "the delay and expense of litigation," will appeal "to big business and little business alike, . . . corporate interests [and] . . . individuals"). Indeed, arbitration's

advantages often would seem helpful to individuals, say, complaining about a product, who need a less expensive alternative to litigation. See, *e.g.*, H. R. Rep. No. 97–542, p. 13 (1982) ("The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in regard to scheduling of times and places of hearings and discovery devices. . ."). And, according to the American Arbitration Association (also an *amicus* here), more than one-third of its claims involve amounts below $10,000, while another third involve claims of $10,000 to $50,000 (with an average processing time of less than six months). App. to Brief for American Arbitration Association as *Amicus Curiae* 26–27.

We are uncertain, however, just how the "objective" version of the "contemplation" test would help consumers. Sometimes, of course, it would permit, say, a consumer with potentially large damage claims, to disavow a contract's arbitration provision and proceed in court. But, if so, it would equally permit, say, local business entities to disavow a contract's arbitration provisions, thereby leaving the typical consumer who has only a small damage claim (who seeks, say, the value of only a defective refrigerator or television set) without any remedy but a court remedy, the costs and delays of which could eat up the value of an eventual small recovery.

In any event, §2 gives States a method for protecting consumers against unfair pressure to agree to a contract with an unwanted arbitration provision. States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause "upon such grounds as exist at law or in equity for the revocation of *any* contract." 9 U. S. C. §2

(emphasis added). What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal "footing," directly contrary to the Act's language and Congress's intent. See *Volt Information Sciences, Inc.,* 489 U. S., at 474.

For these reasons, we accept the "commerce in fact" interpretation, reading the Act's language as insisting that the "transaction" in fact "involve" interstate commerce, even if the parties did not contemplate an interstate commerce connection.

The parties do not contest that the transaction in this case, in fact, involved interstate commerce. In addition to the multistate nature of Terminix and Allied-Bruce, the termite-treating and house-repairing material used by Allied-Bruce in its (allegedly inadequate) efforts to carry out the terms of the Plan, came from outside Alabama.

Consequently, the judgment of the Supreme Court of Alabama is reversed and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.