

Arbitration in the Fifth - April 2024

May 13, 2024 Odean Volker

PRACTICES Litigation, International Arbitration

In April 2024, the Eastern District of Texas’ *Aramark Services, Inc. v. Aetna Life Ins. Co.* considered whether an arbitration agreement’s carve-out for equitable claims meant certain ERISA claims were not arbitrable. In the Western District of Louisiana, *Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.* invited the Louisiana Supreme Court to respond to certified questions related to the arbitration of insurance coverage claims.

Supreme Court of the United States

Bissonnette v. LePage Bakeries Park St., LLC, 144 S. Ct. 905 (2024). The Court answered the question of whether a transportation worker must work for a company in the transportation industry to be exempt under § 1 of the FAA. A transportation worker is one who is “actively” “‘engaged in transportation’ of ... goods across borders via the channels of foreign or interstate commerce.” To be exempt under § 1, a worker “must at least play a direct and ‘necessary role in the free flow of goods’ across borders.” A transportation worker need not work in the transportation industry to fall within § 1’s exemption.

Opinions of United States District Courts

Motions to Compel Arbitration

Spanish Villa, LLC v. Certain Underwriters at Lloyd’s London, No. CV 23-4258, 2024 WL 1367651 (E.D. La. Apr. 1, 2024) (insurance). Motion to compel granted. The agreement to arbitrate was not “null and void” under the New York convention. Inconvenience alone was insufficient to invalidate the agreement. The court declined “to hold that the speculative possibility of the availability of bad faith or consequential loss damages under Louisiana law” rendered the arbitration agreement unconscionable. Plaintiff did not show that the agreement was adhesionary. Plaintiff’s argument that the arbitration agreement should be analyzed under the Panama Convention rather than the New York Convention was rejected because not all parties to the agreement were citizens of nations that are signatories to the Panama Convention.

Better Apart, Ltd. v. Certain Underwriters Lloyd’s London, No. CV 22-3780, 2024 WL 1367640 (E.D. La. Apr. 1, 2024) (insurance). Motion to compel granted.

Dean v. JPMorgan Chase Bank, N.A., No. CV 23-3416, 2024 WL 1435143 (E.D. La. Apr. 3, 2024) (investment account). Motion to compel granted. Signature is not required to show acceptance of an arbitration agreement. Conduct alone “may show the effect or validity of the agreement. Plaintiff electronically signed an account application. The evidence presented satisfied the court that plaintiff agreed to arbitrate. In the space immediately preceding the signature block was a statement in bold that “The Booklet contains a pre-dispute arbitration clause at Section II, Paragraph 23 on page 6.” Also, both the application and the Booklet bore the same “DocuSign Envelope ID” number, indicating that the two documents were presented together in an electronic “envelope” when signed.

Peiffer Wolf Carr Kane Conway & Wise, LLP v. Valley Forge Ins. Co., No. CV 23-6235, 2024 WL 1639130 (E.D. La. Apr. 16, 2024) (insurance). Motion to compel denied. This dispute involved a “commercial general liability insurance policy” and sought payment of defense costs related to a lawsuit. After applying choice of law principles, the court determined that Louisiana law, which did not allow arbitration in this instance, applied.

Compleat Hosp. Mgmt., LLC v. Indep. Specialty Ins. Co., No. CV 23-4032, 2024 WL 1701936 (E.D. La. Apr. 19, 2024) (insurance). Motion to compel granted. Plaintiff contended that “this case differs [from others decided by the court] because it does not “involve[] commingling of a plethora of properties and/or insurance policies.” The proposed distinction was unpersuasive. “Neither the [New York Convention] nor principles of equitable estoppel require ‘commingling of a plethora of properties and/or insurance policies.’”

Register v. Design 1 Group LLC, No. 1:23CV147-HSO-BWR, 2024 WL 1719490 (S.D. Miss. Apr. 22, 2024) (home solar system financing). Motion to compel granted. Application of the severability rule does not depend on the substance of the remainder of the contract. Unless a party challenges the validity of the arbitration agreement itself, the court “must treat [the arbitration agreement] as valid, leaving any challenge to the validity of the agreement as a whole for the arbitrator. Language such as “any disputes arising out of or related to this Agreement” constitutes a broad agreement to arbitrate. A non-signatory was compelled to arbitration based upon the wording of the arbitration agreement that covered third parties as well as direct benefits estoppel. The non-signatory’s position that he was not on notice of the arbitration agreement specifically was rejected. “This is not the standard; the question is whether [he] had actual knowledge of the Loan Agreement as a whole, not the arbitration provision itself.”

Aramark Services, Inc. v. Aetna Life Ins. Co., No. 2:23-CV-00446-JRG, 2024 WL 1839465 (E.D. Tex. Apr. 26, 2024) (third-party ERISA plan administration). The arbitration provision provided that “[a]ny controversy or claim arising out of or relating to this Agreement,” except for “temporary, preliminary, or permanent injunctive relief or any other form of equitable relief,” shall be settled by binding arbitration under the American Arbitration Association rules. The court determined that the natural reading of the provision was that the parties agreed to delegate arbitrability to the arbitrator in accordance with the AAA rules for all disputes except those seeking any form of equitable relief. The court further found that plaintiff’s §§ 1132(a)(2) and (a)(3) claims under ERISA were for monetary damages and were equitable and therefore are not subject to mandatory arbitration.

Ealy v. Lowes Home Ctr. LLC, No. 4:23-CV-03372, 2024 WL 1392565 (S.D. Tex. Apr. 1, 2024) (employment). Motion to compel granted. Under the Federal Arbitration Act (“FAA”), “two conditions must be met for arbitration to be compelled: the presence of a valid arbitration clause and the inclusion of the disputed claims within that clause’s scope.” Once a party presents a presumptively valid arbitration agreement, arbitration must be ordered.

Bradford v. Brident Dental Servs., LLC, No. CV H-23-3460, 2024 WL 1839458 (S.D. Tex. Apr. 26, 2024) (Telephone Consumer Protection Act). Motion to compel granted. Whether a signature is required to bind the parties is a question of the parties’ intent. Signatures are not required as long as the parties give their consent to the terms of the contract, and there is no evidence of an intent to require both signatures as a condition precedent. A class action proceeding is not a substantive right, and arbitration agreements containing class waivers are enforceable. The class action allegations were stricken, and any arbitration must be conducted on an individual basis.

Motions to Confirm/Vacate

Vaughan by & through Vaughan v. Monsour, No. 1:24CV76-HSO-BWR, 2024 WL 1621905 (S.D. Miss. Apr. 15, 2024) (division of recovery from False Claims Act claim). Order to adequately plead subject matter jurisdiction. In determining if it has subject-matter jurisdiction to vacate an arbitration award the court does not look through an application to the underlying substantive controversy between the parties.

Wheatfall v. HEB Grocery Co., LP, No. 4:23-CV-01961, 2024 WL 1859957 (S.D. Tex. Apr. 29, 2024) (Edison, Mag. J.) (Americans with Disabilities Act). Motion to dismiss granted. A motion to vacate an arbitration award must be served upon the adverse party or his attorney within three months after the award is filed. The action to vacate the award was filed in state court one day prior to the deadline and the only attempt to serve the action was by email. Defendant had not consented to service by email.

Other Arbitration-related Decisions

Miller v. Adecco USA, Inc., No. 1:22-CV-1369-DII, 2024 WL 1473763 (W.D. Tex. Mar. 19, 2024) (notice of appeal filed). Dismissed for failure to prosecute. The case was stayed pending arbitration. Defendant's status report indicated that four months later no arbitration was filed. The court ordered plaintiff to show cause why the case should not be dismissed for want of prosecution, but plaintiff did not respond. The court held: "Given that this case was stayed pending arbitration but there is no indication that arbitration has begun, and Plaintiff has not actively monitored federal court proceedings, the Court finds that there is a clear record of inaction and nonresponsiveness that would justify dismissing this action for want of prosecution."

Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co., No. 2:24-CV-00342, 2024 WL 1545135 (W.D. La. Apr. 9, 2024) (notice of appeal filed) (insurance). Questions of law certified to the Louisiana Supreme Court:

1. Whether the 2020 amendment adding Subsection D (Act No. 307 § 1 of 2020) to La. R.S. 22:868 to allow forum and venue selection clauses in limited circumstances implicitly repealed Subsection A's long-standing prohibition of arbitration clauses in all insurance policies in Louisiana? See, e.g., *Doucet v. Dental Health Plans Mgmt. Corp.*, 412 So.2d 1383, 1384 (La. 1982).
2. Whether La. R.S. 9:2778 applies to all contracts with political subdivisions of the State, including insurance contracts, and thereby prohibits venue or arbitration outside of Louisiana or the application of foreign law in claims involving the State and its political subdivisions?
3. If arbitration continues to be prohibited in all insurance policies delivered or issued for delivery in Louisiana, whether a domestic insurer may resort to equitable estoppel under state law to enforce an arbitration clause in another insurer's policy in contravention of the positive law prohibiting arbitration in La. R.S. 22:868(A)(2); and related, whether estoppel can be applied to political subdivisions without satisfying the distinct and heightened standard otherwise required by the Louisiana Supreme Court for application of estoppel to public bodies? See *Saloom v. Department of Transportation and Development*, 2022-00596, p. 6 (La. 12/9/22), 354 So. 3d 1179, 1183; *Showboat v. Slaughter*, 2000-1227, p. 12 (La. 4/3/01), 789 So. 2d 554, 562; accord, *Nucor v. St. James*, 2021-01814, pp. 5-6 (La. 6/29/22), 346 So. 3d 272, 274, respectively.