

Arbitration in the Fifth - December 2023

January 10, 2024 Odean Volker

PRACTICES Litigation, International Arbitration

December 2023 continued the Eastern and Western Districts of Louisiana's focus on arbitration clauses in insurance policies with the courts considering the full gamut of issues, including arbitration clauses as "forum selection," the application of the New York Convention, reverse preemption, whether the arbitration agreements are unenforceable as not being "signed by the parties" and intertwined claims estoppel.

Opinions of the Fifth Circuit Court of Appeals

Llagas v. Sealift Holdings, Inc., No. 23-30047, 2023 WL 8613607 (5th Cir. Dec. 13, 2023) (per curiam). Order compelling arbitration and confirming award affirmed. Philippine worker had been compelled to arbitration pursuant to the "Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships." A non-signatory may compel arbitration based on the equitable-estoppel doctrine under the intertwined-claims basis in two independent circumstances: (1) when the claims rely on the terms of the contract, or (2) when the claims arise out of interdependent and concerted misconduct. The arbitrator's application of Philippines law to plaintiff's claim did not violate public policy.

Opinions of United States District Courts

Motions to Compel Arbitration

U.S. for Use & Benefit of Indus. Roofing & Constr., LLC v. W. Sur. Co., No. CV 23-2119, 2023 WL 8355555 (E.D. La. Dec. 1, 2023) (construction). Motion to compel granted in part and denied in part. Filing a motion to dismiss that sought to enforce an arbitration clause did not support claim of waiver. Surety was not a party to the subcontract and was not successful in compelling arbitration under the subcontract.

Willwoods Cmty. v. Certain Underwriters at Lloyd's London, No. CV 23-6080, 2023 WL 8355556 (E.D. La. Dec. 1, 2023) (insurance). Motion to compel granted. The McCarran-Ferguson Act does not apply to a treaty, such as the New York Convention. Therefore, Chapter 2 of the Federal Arbitration Act. is not reverse-preempted by state law, and arbitration provisions that fall under that Chapter are enforceable in Louisiana.

Manheim v. Indep. Specialty Ins. Co., No. CV 23-4343, 2023 WL 8370369 (E.D. La. Dec. 4, 2023) (insurance). Motion to compel granted. Arbitration clause in an insurance contract was enforced even though it was not "signed by the parties." The Fifth Circuit has determined that the New York convention's phrase "signed by the parties," modified only "an arbitration agreement" and not "an arbitral clause in a contract"; therefore, "an arbitral clause in a contract" need not be signed by the parties. The doctrine of equitable estoppel prevents a plaintiff from objecting to arbitration with a domestic defendant-insurer when the claims against all defendants, foreign and domestic, are inextricably intertwined.

Casa Angelo, Inc. v. Indep. Specialty Ins. Co., No. CV 23-5842, 2023 WL 8600462 (E.D. La. Dec. 12, 2023) (insurance). Motion to compel granted. Agreement to refer “[a]ll matters in dispute” to arbitration if they relate to the insurance policy, including matters involving “the policy's formation and validity” was a valid delegation of arbitrability.

Transp. Consultants, Inc. Certain Underwriters at Lloyd's, London, No. CV 23-6585, 2023 WL 8701103 (E.D. La. Dec. 15, 2023) (insurance). Motion to compel granted. Where a matter involves a foreign insurer, the New York Convention dictates the court's review.

Mail TL, Inc. v. Velocity Risk Underwriters, LLC, No. 2:23-CV-5617, 2023 WL 8702053 (E.D. La. Dec. 15, 2023) (insurance). Motion to compel granted. In determining whether the New York Convention requires compelling arbitration in a given case, the court conducts only a very limited inquiry. An arbitration agreement falls under the Convention and the court should compel arbitration only if four prerequisites are met: (1) there is a written agreement to arbitrate the matter; (2) the agreement provides for arbitration in a Convention signatory nation; (3) the agreement arises out of a commercial legal relationship; and (4) a party to the agreement is not an American citizen.

711 Tchoupitoulas Condominium Assoc. Inc. v. Indep. Specialty Ins. Co., No. 22-CV-276, 2023 WL 8716580 (E.D. La. Dec. 18, 2023) (insurance). Motion to compel granted. Participation in the court's case management program that was focused on resolution of disputes did not amount to invoking the litigation process for purposes of waiver. A contract provision does not constitute an adhesive clause “merely because it does not jump off the page.” Because Louisiana law considers arbitration clauses as a type of forum selection clause, Louisiana Revised Statute Section 22:868(D) authorizes arbitration clauses in policies issued by surplus lines insurers.

Union Bethel African Methodist Episcopal Church v. Indep. Specialty Ins. Co., No. CV 23-5455, 2023 WL 8804895 (E.D. La. Dec. 20, 2023) (insurance). Motion to compel granted. Louisiana law recognizes arbitration clauses as a type of forum selection clause. Therefore, Louisiana law does not prohibit the enforcement of such clauses in surplus lines policies. The doctrine of equitable estoppel prevents a plaintiff from objecting to arbitration with a domestic defendant-insurer when the claims against all defendants, foreign and domestic, are inextricably intertwined. The doctrine is motivated by a desire to avoid arbitrating claims against one defendant while litigating claims against another, which may yield inconsistent results, waste time and resources, and thwart federal policy favoring arbitration.

Town of Vinton v. Certain Underwriters at Lloyds London, No. 2:23-CV-00240, 2023 WL 8655270 (W.D. La. Dec. 14, 2023) (insurance). Motion to compel denied. Two foreign insurers were originally named in the lawsuit, but were voluntarily dismissed with prejudice by the plaintiff prior to the case being removed to federal court. Under the policy in effect during the relevant time period each insurer in the syndicate had its own separate contract with plaintiff, each with a separate policy number, and the liability was joint among insurers.

Soc. of the Roman Catholic Church of the Diocese of Lake Charles v. Catholic Mut. Relief Soc. of Am., No. 2:21-CV-03480, 2023 WL 8723194 (W.D. La. Dec. 18, 2023) (insurance). Motion to compel denied. Louisiana law prohibits arbitration agreements in certain insurance policies covering property within the state. La. Rev. Stat. § 22:868(A)(2). Under the McCarran-Ferguson Act, state laws regulating insurance are shielded from federal preemption. Accordingly, McCarran-Ferguson allows state laws to reverse-preempt the Federal Arbitration Act's provisions on the enforceability of insurance agreements.

Nicholas Servs., LLC v. Bombardier Inc., No. 3:23CV251 MPM-RP, 2023 WL 8888641 (N.D. Miss. Dec. 26, 2023) (warranty). Motion to compel granted. A decision on whether or not an arbitration agreement should be enforced against a non-signatory, such as on the basis of equitable estoppel, is a question for courts and not arbitrators. The parties cannot delegate disputes over “the very existence of an arbitration agreement.”

Hicks v. Hartman Income Reit, Inc., No. 3:23-CV-1294-X, 2023 WL 8437057 (N.D. Tex. Dec. 4, 2023) (employment). Motion to compel granted. The agreement containing the arbitration clause was not signed. Under Texas law, “a signature is not required to bind the parties to a contract unless the parties intended to require a signature.” The agreement did not indicate that a signature was required.

Kennedy v. Equifax Info. Servs. LLC, No. SA-23-CV-00470-FB, 2023 WL 8656926 (W.D. Tex. Dec. 13, 2023) (debt collection). Motions to compel granted. Because plaintiff argued that he was never a party to the contracts containing the arbitration agreements, the court was required to evaluate whether there was in fact an agreement formed prior to compelling arbitration. However, a party cannot simply declare the agreement to be invalid, but instead “must produce at least some evidence to substantiate his factual allegations” to entitle the party to an evidentiary hearing on the issue.

Motions to Confirm/Vacate

Civic. Ctr. Site Dev., L.C.C. v. Certain Underwriters at Lloyd’s London, No. CV 23-1071, 2023 WL 8878951 (E.D. La. Dec. 22, 2023) (insurance). Award confirmed. Arbitration is binding where the rules under which the arbitration is conducted call for binding arbitration. All parties are on notice that resort to arbitration will be deemed both binding and subject to entry of judgment unless the parties expressly agree otherwise. Therefore, parties need not provide express agreement to be bound by Federal Arbitration Act section 9.

Other Arbitration-related Decisions

In re Envision Healthcare Corp., No. 23-90342, 2023 WL 8607444 (Bankr. S.D. Tex. Dec. 12, 2023) (bankruptcy) Motion to compel denied. A bankruptcy court may decline to enforce an arbitration agreement with regard to a dispute “whose underlying nature derives exclusively from the provisions of the Bankruptcy Code” when arbitration would conflict with the purposes of the Code.