

Arbitration in the Fifth - February 2023

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PRACTICES International Arbitration, Litigation

In February 2023, motions to compel arbitration of insurance coverage disputes remained a significant focus for the courts within the Fifth Circuit. The Southern District of Texas' decision in Hammond v. U.S. Fire Inc. Co. (Del.), serves a reminder that a company's failure to satisfy institutional requirements for consumer arbitration may forfeit the opportunity to arbitrate the merits of a dispute.

Opinions of United States District Courts

Motions to Compel Arbitration

3501 N. Causeway Assocs. LLC v. Certain Underwriters at Lloyd's, London, No. CV 22-3787, 2023 WL 1765920 (E.D. La. Feb. 3, 2023) (insurance). Motion to compel granted. The New York Convention, as implemented by 9 U.S.C. § 201 et seq., preempts and supersedes state law.

Pepe v. New York Life Ins. Co., No. CV 22-4005, 2023 WL 1814879 (E.D. La. Feb. 7, 2023) (employment). Motion to compel granted. To determine whether to compel arbitration is a two-step inquiry. First, the court determines whether the parties agreed to arbitrate the dispute in question. This determination ordinarily involves two considerations: (1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement. But, when the parties' agreement contains a delegation clause, the court analyzes whether there is a valid agreement, and if so, whether there is clear and unmistakable evidence that the parties intended to arbitrate arbitrability.

Coastal Cargo Co., LLC v. Tenaris Glob. Services (Canada) Inc., No. CV 22-4622, 2023 WL 1863163 (E.D. La. Feb. 9, 2023) (stevedoring). Motion to compel denied. It is axiomatic that arbitration is a matter of contract and a party cannot be required to submit to arbitration a dispute that the party has not agreed to arbitrate. Furthermore, "it is hornbook law that the consent of the parties is necessary to form a valid contract and where there is no meeting of the minds between the parties the contract is void for lack of consent." Evidence was not sufficient to show that that agreement that was allegedly emailed to defendant was actually emailed and agreed to by defendant.

Bopp v. Indep. Specialty Ins. Co., No. CV 23-18, 2023 WL 2185412 (E.D. La. Feb. 23, 2023) (insurance). Motion to compel granted. Although plaintiffs "may have separate insurance contracts with each insurer . . . equitable estoppel prevents a plaintiff from objecting to arbitration with a domestic insurer when the claims against all defendants, foreign and domestic, are inextricably intertwined." The arbitration clause was not adhesionary under Louisiana law.

Ashi Houma Hotels, LLC v. Indep. Specialty Ins. Co., No. CV 22-5289, 2023 WL 2263822 (E.D. La. Feb. 28, 2023) (insurance). Motion to compel granted. That insurance contract containing the arbitration clause was not signed did not prevent enforcement under the New York Convention. Further, the exchange of communications between the insured and insurer satisfied the New York Convention's alternative requirement that the arbitration be "contained in an exchange of letters or

telegrams”. The insured’s request that the court reject the contractual choice of law clause and hold that the substantive law of Louisiana applied to the insurance policy was rejected.

Wilson v. Kemper Corp. Servs., Inc., No. 5:22-CV-62-DCB-LGI, 2023 WL 1997792 (S.D. Miss. Feb. 14, 2023) (insurance). Motion to compel denied. Arbitration clause contained a requirement that arbitration be filed within three years of the date of loss or the claim was waived. An arbitration limitation provision is akin to a statute of limitation. The arbitration limitation did not permit the court to adjudicate a claim merely because the time in which plaintiff was required to submit her claim to arbitration had elapsed by the time defendants filed their motion to compel.

Johnson v. Sw. Recovery Servs. Inc., No. 3:22-CV-242-X-BH, 2023 WL 1944127 (N.D. Tex. Jan. 24, 2023) (Ramirez, Mag. J.), report and recommendation adopted, 2023 WL 1879999 (Feb. 10, 2023) (credit reporting). Motion to compel granted. Arbitration agreement contained in a “click-wrap” agreement was enforced. Generally, a “clickwrap agreement” requires the user to assent to the terms of a contract by clicking an “accept” button on a website to complete a transaction.

Signal Ridge Owners Ass’n, Inc. v. Landmark Am. Ins. Co., No. 3:22-CV-1385-D, 2023 WL 2090994 (N.D. Tex. Feb. 17, 2023) (insurance). Plaintiff obtained insurance through four insurers each taking a percentage of the risk. One of the four insurance contracts included an arbitration clause. The motion to compel sought arbitration for all insurers. The court determined that the insurance policy constituted one contract between insured, on the one hand, and the four insurers, on the other. The court based this “conclusion at least on the rule that multiple documents that are executed contemporaneously, that pertain to the same transaction, and that represent necessary parts of one whole agreement can be construed as one instrument.” The conclusion was also supported by intertwined claims estoppel.

Hammond v. U.S. Fire Inc. Co. (Del.), No. 4:22-CV-2004, 2023 WL 2142979 (S.D. Tex. Feb. 21, 2023) (travel insurance). Motion to compel denied. Travel service moved to compel arbitration of a claim by its customer. The customer had previously filed an arbitration with the American Arbitration Association (“AAA”) which “decline[ed] to administer plaintiffs’ claim . . . because defendant had not registered its arbitration clause with AAA’s Consumer Clause Registry or completed the other steps in AAA’s registration process for consumer claims.” Accordingly, “arbitration ‘has been had’ in accordance with the parties’ arbitration agreement.”

Prangner v. EK Real Estate Servs. of NY, LLC, No. CV H-21-3406, 2023 WL 2143605 (S.D. Tex. Feb. 21, 2023) (Bray, Mag. J.) (real estate sale-leaseback). Motion to compel granted. Incorporation of the AAA Rules clearly and unmistakably vested the arbitrator with responsibility to resolve issues of arbitrability. The court’s task to determine the arbitration agreement’s validity is limited to contract formation. The argument that Texas law prohibits arbitration agreements in mortgages secured by a primary dwelling applied only to enforceability of the agreement to arbitrate the merits and not to enforceability of the agreement to arbitrate arbitrability.

Motions to Confirm/Vacate Award

Marshall v. Human Servs. of SE. Tex., Inc., No. 1:21-CV-529, 2023 WL 1818214 (E.D. Tex. Feb. 7, 2023) (employment). Award confirmed. Parties’ agreement to use the AAA Employment Arbitration Rules and Mediation Procedures and the statement in their agreement that the arbitration was “final and binding” were clear indications that the parties agreed to binding arbitration. The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 did not apply retroactively to claims that arose prior to its enactment.

Redmond v. Polunsky, trustee, No. 4:20-MC-00204-ALM, 2023 WL 2143600 (E.D. Tex. Feb. 21, 2023). Dismissed for lack of jurisdiction. The arbitration award was issued by “Private International Arbitration Association” which the court noted “does not appear to be a legitimate arbitration association.” “Even if there were subject matter jurisdiction, the action is wholly frivolous.” The “the action ‘is based on the indisputably meritless legal theory that an individual can fabricate an arbitration award and then enforce it in federal district court.’”

Other Arbitration-Related Issues

Breland v. Law Office of Debra Jennings, PLLC, No. 4:22-CV-3284, 2023 WL 1965997 (S.D. Tex. Feb. 13, 2023) (legal services). Remanded to state court. The Federal Arbitration Act is not an independent grant of federal jurisdiction.