

Arbitration in the Fifth – April 2023

May 9, 2023 Odean Volker

PRACTICES Litigation, International Arbitration

April 2023 saw the usual mix of arbitration-related cases addressing motions to compel and to confirm awards. The Fifth Circuit reminded district courts that in order to protect their jurisdiction, they should stay, and not dismiss, cases where an injunction has been issued in aid of an arbitration. In the Eastern District of Louisiana, *Lewis v. Friedman* considered the requirements under Louisiana law for enforcement of an arbitration agreement in an attorney-client engagement.

Opinions of the Fifth Circuit Court of Appeals

Direct Biologics, L.L.C. v. McQueen, 63 F.4th 1015, 1024 (5th Cir. 2023) (noncompete/trade secrets). If a district court determines that a preliminary injunction should issue to preserve the status quo while an arbitration is pending, the district court should stay the proceedings in lieu of dismissal, so as to preserve its jurisdiction to enforce its injunction.

Savage v. Walmart Stores, Inc., No. 22-10289, 2023 WL 2964411 (5th Cir. Apr. 14, 2023) (per curiam). The court cannot reconsider the merits of a claim resolved in the arbitration proceeding.

Opinions of United States District Courts

Motions to Compel Arbitration

Arbors on the Lake 2018, LLC v. Certain Underwriters at Lloyd's, London, No. CV 23-192, 2023 WL 2785573 (E.D. La. Apr. 5, 2023) (insurance). Motion to compel granted. An arbitration clause in an insurance agreement satisfies the New York Convention's requirement that the arbitration arise from a commercial relationship.

Ishwar Krupa, LLC v. Indep. Specialty Ins. Co., No. 2:22-CV-03240, 2023 WL 2917438 (E.D. La. Apr. 12, 2023) (insurance). Motion to compel granted. Under controlling Fifth Circuit case law, Article II of the New York Convention requires either (1) an arbitral clause in a contract or (2) an arbitration agreement signed by the parties or contained in an exchange of letters or telegrams. Therefore, the arbitral clause in the insurance contract between insured and insurer was not rendered nonbinding by the fact that it was not signed by the insured.

Goux Enterprises v. Indian Harbor Ins. Co., No. CV 22-4330, 2023 WL 2955305 (E.D. La. Apr. 14, 2023) (insurance). Motion to compel granted. Plaintiff sued its domestic insurers, and they removed to federal court. The domestic and foreign insurers then filed a separate action to compel arbitration. When an insured alleges that all insurers engaged in "interdependent and concerted misconduct" by "arbitrarily and capriciously" failing to make payments under a policy, the insured is equitably estopped from objecting to arbitration as to the domestic insurers. Plaintiff's argument that the arbitration clause in the insurance agreement was not enforceable since it was not signed was foreclosed by binding Fifth Circuit precedent.

Fairway Vill. Condominiums v. Indep. Specialty Ins. Co., No. CV 22-2022, 2023 WL 2866944 (E.D. La. Apr. 10, 2023) (insurance). Motion to compel denied. Louisiana law regards arbitration

provisions in insurance contracts as a “condition, stipulation, or agreement” that deprives Louisiana courts of jurisdiction over the action.

Lewis v. Friedman, No. CV 22-4007, 2023 WL 3042140 (E.D. La. Apr. 21, 2023) (legal services). Motion to compel granted. Louisiana law recognizes the validity of arbitration agreements in attorney-client engagement agreements provided they “include a ‘full and complete disclosure of the potential effects of an arbitration clause,’ as well as ‘the types of disputes covered by the arbitration clause.’”

Bloom Energy Corp. v. Plansee SE & Global Tungsten & Powders Corp., No. 222CV00101JRGRSP, 2023 WL 3097952 (E.D. Tex. Apr. 26, 2023) (intellectual property). Motion to compel granted. Provision of agreement that stated: “[i]f disagreements arise under this Agreement or concerning its execution, validity, formation or interpretation thereof ... [t]he disagreement shall ... be referred to and finally determined by arbitration ...” clearly and unmistakably delegated arbitrability to an arbitrator.

Colquitt v. Concorde Career Coll. - Dallas, No. 3:23-CV-430-BN, 2023 WL 2776728 (N.D. Tex. Apr. 4, 2023) (education). Motion to compel granted. A party may bring a motion to compel arbitration under the Federal Arbitration Act, and a court must direct parties to arbitration if the court is “satisfied that the making of the agreement for arbitration ... is not in issue.”

Cruz v. Resolute Capital Partners Ltd LLC, No. 3:22-CV-02349-E, 2023 WL 3021079 (N.D. Tex. Apr. 20, 2023) (investment). Motion to compel granted. The express adoption of the American Arbitration Association rules presented clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.

Barnes v. Vroom Auto., LLC, No. 4:22-CV-2907, 2023 WL 3025076 (S.D. Tex. Apr. 20, 2023) (auto purchase). Motion to compel granted. Language in the purchase agreement, that “any dispute or claim that, under the Magnuson-Moss Warranty Act, may not be the subject of a pre-dispute agreement to arbitrate” did mean that claims under the Magnuson-Moss Warranty Act were absolutely excluded from the scope of the arbitration clause. The language simply acknowledged that the purchase agreement was a form agreement governed by the law of the state in which the seller dealership was located and that the arbitrability of claims under the Magnuson-Moss Warranty Act depended on the forum. In both state and federal courts in Texas, the claims asserted under the Magnuson-Moss Warranty Act were arbitrable.

Motion to Confirm or Vacate

Plaza Home Mortgage, Inc. v. Innovated Holdings, Inc. d/b/a Sitcomm Arbitration Ass'n, No. 2:21CV38-HSO-BWR, 2023 WL 3145317 (S.D. Miss. Apr. 3, 2023). Default judgment granted and award vacated. The purported arbitration award issued through Sitcomm Arbitration Association “was issued without authority, consent, or jurisdiction, and [was] therefore void and unenforceable.”

Predmore v. Nick's Clubs, Inc., No. 3:23-CV-0253-X, 2023 WL 2895257 (N.D. Tex. Apr. 11, 2023) (FLSA). Motion to dismiss petition to confirm denied for “failure to state with particularity the grounds for seeking the order.”

Other Arbitration-Related Issues

Arch Ins. Co. v. Clark Constr., Inc., No. 5:22-CV-100-KS-BWR, 2023 WL 2762025 (S.D. Miss. Apr. 3, 2023) (construction). Motion stay litigation granted. In some instances allowing litigation to

proceed simultaneously with arbitration could create a risk of inconsistent results and duplicative litigation. “Thus out of caution” the court stayed the case pending the resolution of the arbitration.

Urban Edge Network Inc. v. Webber Mktg. & Consulting, LLC, No. 3:22-CV-02021-M, 2023 WL 2825697 (N.D. Tex. Mar. 13, 2023). (broadcast/media license). Application to enjoin arbitration hearing denied. Plaintiff did not establish a likelihood of success on the merits to justify enjoining the arbitration proceeding pending resolution of the motion to compel arbitration. The court found that “the plain text of the [arbitration agreement] delegates the issue of the arbitrability . . . to the arbitrator, including those claims asserted against non-signatories to the Agreement.” Plaintiff did not establish “a likelihood of success that its claims against the non-signatory Defendants are not subject to arbitration.”