

Arbitration in the Fifth – April 2025

May 14, 2025 Odean Volker

PRACTICES Litigation, International Arbitration

In April 2025, the Fifth Circuit Court of Appeals solidified its position that “manifest disregard for the law” is neither an independent ground to challenge an award nor is it “judicial gloss” on §10(a)(4). Also from the Fifth Circuit, *Wilson v. Kemper Corp. Services, Inc.* serves as a reminder that a denial of remand may be part of a post-award appeal in a matter that was stayed after being compelled to arbitration.

Opinion of the Fifth Circuit Court of Appeals

Wilson v. Kemper Corp. Services, Inc., 134 F.4th 339 (5th Cir. 2025) (insurance). Order confirming award vacated, order compelling arbitration vacated and order denying motion to remand reversed. This matter was removed from state court with the defendants arguing fraudulent joinder as to the nondiverse defendants. The plaintiff moved to remand the case. The remand was denied, a motion to compel was granted and an arbitral award was ultimately entered. The Fifth Circuit determined that joinder of at least one of the nondiverse defendants was proper. Accordingly, the district court lacked subject matter jurisdiction. “This, in turn, vitiates [the trial court] order compelling arbitration, the arbitration itself, and its confirmation of . . . [the] arbitral award.”

Profit v. Coleman, No. 24-30624, 2025 WL 1113228 (5th Cir. Apr. 15, 2025) (per curiam). Appeal dismissed for lack of jurisdiction. Order compelling arbitration and staying case is not appealable under the Federal Arbitration Act.

U.S. Trinity Energy Servs, L.L.C. v. Se. Directional Drilling, L.L.C., No. 24-10833, 2025 WL 1218096 (5th Cir. Apr. 28, 2025) Order confirming award affirmed. Under Federal Arbitration Act § 10(a)(4):

merely convincing a court of an arbitrator's error—even his grave error—is not enough. Instead, an arbitral decision even arguably construing or applying the contract must stand, regardless of a court's view of its (de)merits. The question for a judge is not whether the arbitrators construed the parties' contract correctly, but whether they construed it at all. Only when the arbitrator acts outside the scope of their contractually delegated authority—issuing an award that simply reflects their own notions of economic justice rather than drawing its essence from the contract—may a court vacate this determination. In simpler terms, the potential for ... mistakes is the price of agreeing to arbitration. (internal citations and quotations omitted).

The court also understood appellant to contend that the arbitration panel exceeded its authority by ignoring Texas law. Appellant asserted manifest disregard as an independent objection and as “judicial gloss” on § 10(a)(4). By framing the argument this way, appellant “essentially ignores [manifest disregard’s] inapplicability as an independent basis while simultaneously attempting to subterfuge this non-statutory ground for vacatur within § 10(a)(4).” The court held: “[W]e cannot substitute a court panel's judgment in place of an arbitration panel's decision by recognizing “manifest disregard of the law” as a basis for vacatur embedded within § 10(a)(4).”

Opinions of United States District Courts

Motions to Compel Arbitration

Charles House Condo. Ass'n Inc. v. Old Republic Union Ins. Co., No. CV 22-2513, 2025 WL 1068256 (E.D. La. Apr. 9, 2025) (insurance). Motion to reconsider order compelling arbitration denied. “Plaintiff does not establish that the contract at issue here should be construed as separate contracts or that the [New York] Convention does not otherwise apply. Because *Police Jury of Calcasieu Parish* does not apply to insurance contracts governed by the [New York] Convention, plaintiff has failed to establish that a change in intervening law warrants vacating the order compelling arbitration in this matter.”

Bros. Petroleum, LLC v. Certain Underwriters at Lloyd's, No. CV 23-445, 2025 WL 1179461 (E.D. La. Apr. 23, 2025) (insurance). Motion to reconsider order compelling arbitration granted and motion to compel denied. The insurance policies at issue provided that they “shall be constructed as a separate contract between the Insured and each of the Insurers,” and that “[t]his evidence of coverage does not constitute in any manner or form a joint certificate of coverage by Underwriters at Lloyd's with any other insurance company(ies).” As a result, the court determined that the “independent agreements to arbitrate with each of the domestic insurers respectively are entirely between United States citizens, separate and apart from its agreements to arbitrate with the foreign insurers that subscribed to the policy vis-à-vis Lloyd's.” Further, “whether a plaintiff can be compelled to arbitrate with a domestic insurer under the [New York] Convention through equitable estoppel is a matter of state law, not federal law.”

Williams v. CVS Pharmacy, Inc., No. 1:24-CV-378-HSO-BWR, 2025 WL 1118597 (S.D. Miss. Apr. 15, 2025) (employment). Motion to compel granted. The arbitration provision provided in part: “Covered Claims also include disputes arising out of or relating to the validity, enforcement or breach of this agreement” The provision evidenced a clear intent to delegate any question as to the enforceability of the agreement to an arbitrator. Further, incorporation of the Employment Arbitration Rules of the American Arbitration Association presented “clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.” “If an agreement was formed and a valid delegation clause exists, the analysis ends, and a court is to compel arbitration.”

Carroll v. Vivid Seats, LLC, No. 3:25-CV-127-X-BN, 2025 WL 1071880 (N.D. Tex. Mar. 24, 2025), report and recommendation adopted, 2025 WL 1071336 (Apr. 9, 2025) (employment). Motion to compel granted. Claims for violations of the American with Disabilities Act are subject to mandatory arbitration.

Brown v. Patel, No. 4:24-CV-05036, 2025 WL 1168282 (S.D. Tex. Apr. 22, 2025) (Ho, Mag. J.) (employment). Motion to compel granted. The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act provides that arbitration agreements are unenforceable with respect to cases that relate to a sexual assault dispute or a sexual harassment dispute. It does not prohibit enforcement of arbitration agreements in disputes related to allegations of sex discrimination.

Polk v. Am. Residential Services, LLC, No. 4:24-CV-2961, 2025 WL 1179873 (S.D. Tex. Apr. 17, 2025) (employment). Motion to compel granted. “As a general rule [under Texas law], even contracts of adhesion are not automatically unconscionable.” The employment contract at issue was not a contract of adhesion and plaintiff was given the opportunity to opt out of the arbitration provision. “Plaintiff was given the terms, and the opportunity to opt out of the arbitration provision, and affirmatively chose to sign the agreement. As such, Plaintiff has not adequately shown that the agreement is unconscionable on either procedural or substantive grounds.”

Parrott v. Int'l Bank of Commerce, No. 5:24-CV-1263-DAE, 2025 WL 1176523 (W.D. Tex. Apr. 16, 2025) (ERISA). Motion to compel denied. Plaintiff was a former employee that “already received his full distribution from the Plan” when the Plan was amended to add an arbitration provision. The court found that there was not consideration under Texas law for the Amended Arbitration agreement.