Arbitration in the Fifth – August 2025

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PRACTICES Litigation, International Arbitration

In August 2025, the Eastern District of Texas considered and rejected sweeping challenges to the FINRA arbitration structure in *Mansour v. Morgan Stanley*, and in *Fortis Advisors, LLC v. Atos IT Sols. & Services, Inc.*, the court denied arbitration, finding that a post-closing dispute resolution clause called for expert determination and not arbitration.

Opinions of United States District Courts

Motions to Compel Arbitration

Riley v. Nat'l R.R. Passenger Corp., No. CV 25-654, 2025 WL 2419728 (E.D. La. Aug. 21, 2025) (train ticket). Motion to compel granted. Plaintiffs purchased train tickets online. Before plaintiffs could complete the purchase, they were required to click a checkbox confirming their review of, and agreement to, the carrier's terms and conditions. An unchecked box prevented a ticket purchase. The text contained a hyperlink to the “terms and conditions,” set off by darker blue text, and immediately highlighted “the binding arbitration clause”.

Hermes Health All., LLC v. Certain Underwriters at Lloyd's, London, No. CV 23-2276, 2025 WL 2495033 (E.D. La. Aug. 29, 2025) (insurance). Motion to compel non-signatory granted. The insured did not oppose the insurers’ motion to compel arbitration pursuant to the New York Convention. A non-signatory embraces a contract containing an arbitration clause by knowingly seeking and obtaining “direct benefits” from the contract. A non-signatory must have had actual knowledge of the contract. The non-signatory admitted prior knowledge of the insurance contract and sought to receive a “direct benefit” from that policy in the form of the insurance proceeds paid pursuant to that policy.

Lane v. Regions Bank, No. 4:25-CV-00038-MPM-DAS, 2025 WL 2375420 (N.D. Miss. Aug. 14, 2025) (Home Equity Line of Credit Contract). Motion to compel granted. A typographical error in the loan modification agreement’s identification of the deed of trust did not prevent enforcement of arbitration clause in the deed of trust.

Coastal Television Broad. Group LLC v. Mississippi Television, LLC, No. 1:24-CV-100-SA-DAS, 2025 WL 2445540 (N.D. Miss. Aug. 25, 2025) (television station management). Motion to compel granted. Under Mississippi law, “broad arbitration language governs disputes ‘related to’ or ‘connected with’ a contract, and narrow arbitration language requires arbitration of disputes that directly ‘arise out of’ a contract.’” Broad arbitration language is capable of expansive reach. It is only necessary that the dispute “touch” matters covered by the parties’ agreement to be arbitrable.

Welsh ex rel. Green v. Charles Schwab & Co., Inc., No. 3:25-CV-298-KHJ-MTP, 2025 WL 2496126 (S.D. Miss. Aug. 29, 2025) (brokerage account). Motion to compel denied without prejudice and bench trial to be held to determine whether an arbitration agreement exists. To put the making of the arbitration agreement “in issue,” the objecting party must “unequivocally deny” the existence of an agreement to arbitrate and must produce “some evidence.” Under Nebraska and California law, forgery prevents contract formation. In support of her claim of forgery, plaintiff produced evidence

suggesting that the decedent did not sign the account agreements. That evidence included an affidavit that decedent never owned a computer or smartphone and never learned how to use one, did not have the mental faculties to open the brokerage accounts online and that the agreements bear a relative's email address and an out-of-state phone number, "even though decedent lived in Mississippi and preferred using a landline." Plaintiff also alleged that the decedent gave her a power of attorney but did not disclose either brokerage accounts.

Thompson v. Brew Culture, LLC, No. 3:24-CV-331-HTW-LGI, 2025 WL 2198616 (S.D. Miss. Aug. 1, 2025) (Telephone Consumer Protection Act). Motion to compel granted. Plaintiff allegedly provided her phone number to enroll in a rewards program and subsequently received texts confirming her enrollment and offering rewards. The confirmatory text "included a prominent hyperlink to [terms and conditions]." That hyperlink provided information about the rewards account and included language regarding arbitration. Text messages contained a sentence instructing plaintiff to "Reply STOP to opt out." Under Mississippi law, a person cannot avoid a written contract on the grounds that she did not read the contract.

Fortis Advisors, LLC v. Atos IT Sols. & Services, Inc., No. 4:24-CV-186, 2025 WL 226670 (E.D. Tex. Aug. 7, 2025) (mergers and acquisition). Motion to compel denied. The Federal Arbitration Act determines questions of arbitration after a court determines—by applying ordinary state law principles—whether an agreement to arbitrate exists. Defendant argued that arbitration should be compelled in a post-closing earnout dispute relying on a provision of the Agreement and Plan of Merger requiring submission of the dispute to an accountant. However, the dispute resolution provision stated that the "Arbitrating Accountant" was "acting as an expert and not an arbitrator." Under Delaware law, "if parties wish to specify that they are invoking the work of an expert, rather than an arbitrator, then they should use 'expert not arbitrator language.'" The court held that "[a]n expert determination ... is not an arbitration unless the parties specifically 'designate the expert as an arbitrator for that purpose.'" Further "[a]t the very least, the language calling for an Arbitrating Accountant who is to act as an expert rather than an arbitrator creates an ambiguity . . . [and Delaware] courts routinely refuse to enforce a contract provision that 'unclearly or ambiguously reflects the intention to arbitrate.'" The "Arbitrating Accountant's" narrow decision-making authority also suggested to the court that the that the role was that of expert and not arbitrator.

Mansour v. Morgan Stanley, No. 4:24-CV-459, 2025 WL 2380456 (E.D. Tex. Aug. 15, 2025) (broker-dealer). Motions to compel granted. Under New York law, "he who signs or accepts a written contract, in the absence of fraud or other wrongful act on the part of another contracting party, is conclusively presumed to know its contents and to assent to them." In one agreement at issue, the signature page stated that the party agreed to arbitrate. The court found that while the agreement provided NASD and NYSE as alternative arbitration forum, neither of which still exist, "courts routinely substitute FINRA (NASD's successor) as the appropriate arbitral forum." As to a different arbitration agreement, the plaintiff argued it was superseded by a subsequent loan agreement. Whether an arbitration agreement can be superseded by a later agreement is a question of contract interpretation. When the second agreement can be construed in harmony with the original agreement, there is no need to alter the original. "While Plaintiff argues that the Loan Agreements supersede the Account Agreement, the Court finds that the agreements can be read in harmony. . . Nothing in the Loan Agreement states that they override or supersede the arbitration agreements found in the Account Agreement." The court found that that "the time limits in FINRA Rule 12206 do not serve as a defense to arbitration, as the FINRA arbitrators should determine its applicability." The court also found that enforcement of arbitration agreements that plaintiff contended were in furtherance of a criminal enterprise was not barred by public policy. "[T]he SEC's expansive statutory power to regulate SROs includes the power to regulate arbitration procedures." SEC

approval of FINRA arbitration does not violate Article III, Section 2 of the U.S. Constitution nor does it implicate the Seventh Amendment right to jury trial.

Motions to Confirm/Vacate an Award

Shah v. Agarwal, No. 3:25-CV-1761-L, 2025 WL 2256510 (N.D. Tex. Aug. 7, 2025). Dismissed without prejudice for lack of subject matter jurisdiction. Court would not "look through" the Petition to Confirm Arbitration Award to the underlying arbitration proceeding for purposes of confirming whether the amount in controversy is satisfied. The "look through" approach "does not apply to applications to modify, confirm, or vacate arbitral awards."

Bobino v. PNC Bank Nat'l Ass'n, No. 4:25-CV-1363, 2025 WL 2256562 (S.D. Tex. Aug. 6, 2025). Award confirmed. "The FAA does not require arbitrators to adopt a party's preferred framing of claims, only to address the substance of the dispute." Plaintiff's assertion of "evident partiality" failed because he offered no evidence of bias beyond "the arbitrator's adverse rulings, which alone are insufficient." Arbitrator acted within permissible discretion in concluding that plaintiff's unsubstantiated discovery request was a "fishing expedition." Plaintiff's due process rights were not violated by the refusal to allow cross-examination of a witness in a "documents-only" proceeding. "The FAA imposes no categorical right to cross-examination in arbitration."

Other Arbitration-Related Opinions

Daye v. United Auto Credit Corp., No. 5:24-CV-100-DCB-LGI, 2025 WL 2453801 (S.D. Miss. Aug. 26, 2025). Remand denied. Typically, a district court must resolve a motion to compel arbitration before taking other action in a case. An exception to this rule exists when the motion to remand is based on an alleged lack of jurisdiction.