

Arbitration in the Fifth – August 2026

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In August 2026, the Fifth Circuit Court of Appeals considered whether an asymmetric clause was adhesiory under Louisiana law in *MAPP, L.L.C. v. Floor & Decor Outlets of Am., Inc.* In *Cowan v. Boyd*, the Southern District of Texas considered whether nonsignatories could enforce an arbitration clause in a case where some of the respondents were also nonsignatories.

Opinions of the Fifth Circuit Court of Appeals

MAPP, L.L.C. v. Floor & Decor Outlets of Am., Inc., 184 F.4th 739 (5th Cir. 2026). Order denying motion to compel affirmed. The parties' arbitration agreement provided in part that "[a]ny disputed Claims that cannot be decided by confidential negotiation or mediation may, in the sole discretion of Owner, be decided by arbitration." Given the unilateral right to invoke arbitration, the court examined "whether the contract is one of adhesion" under Louisiana law. "There is no categorical rule barring non-mutual arbitration clauses" in Louisiana law. Rather, in evaluating arbitration clauses, a court must consider "the context of the overall contract and the surrounding circumstances" and weigh the following factors: "(1) the physical characteristics of the arbitration clause, (2) the distinguishing features of the arbitration clause, (3) the mutuality of the arbitration clause, and (4) the relative bargaining strength of the parties." The parties' agreement also provided for recovery of fees by a party that files a motion to compel arbitration. This factor supported adhesion. The court also found the facts of the case supported the argument that the "local contractor seeking a national retail chain's business" was in an inferior bargaining position. "The arbitration provision was adhesiory under Louisiana law and thus unenforceable."

Cunningham v. PlainsCapital Bank, No. 25-20363, 2026 WL 2280606, at *4 (5th Cir. Aug. 7, 2026). Order compelling arbitration confirmed. Under Texas law, account "[s]ignature cards are valid contracts." The authorized signer on the account had authority to "act on behalf of [the partnership] in all transactions." Documents incorporated by reference in the signature card are part of the parties' contract. Texas courts "presume that 'a party who signs a contract knows its contents.'"

Opinions of United States District Courts

Motions to Compel Arbitration

Jefferson v. Neuralogix Mgmt., LLC, No. 1:25-CV-00167-RPC-DAS, 2026 WL 2333838 (N.D. Miss. Aug. 12, 2026) (consumer credit). Motion to compel granted. Delegation "clauses are enforceable and transfer the court's power to decide arbitrability questions to the arbitrator." Any disputes about whether a claim falls within the scope of the arbitration agreement must be decided by the arbitrator, not the court.

Zehaifi v. Bank of Am., N.A., No. 4:26-CV-01264, 2026 WL 23540912 (S.D. Tex. Aug. 13, 2026) (Ho, Mag. J.) (employment). Motion to compel granted. Under Texas law, to "demonstrate a modification of the terms of at-will employment, the proponent of the modification must demonstrate that the other party (1) received notice of the change and (2) accepted the change." In this case, the arbitration agreement was circulated by email and accepted by plaintiff when he "click[ed] the

“Acknowledge and Agree” button in the email. “[C]ourts applying Texas law routinely hold that an electronic acknowledgement can constitute assent to an arbitration agreement.” Further, “an at-will employee who continues working with notice of a new arbitration policy is deemed to have accepted the policy as a matter of law.”

Cowan v. Boyd, No. CV H-25-4476, 2026 WL 2386735 (S.D. Tex. Aug. 17, 2026) (cryptocurrency). Motion to compel denied. “The issue is whether the defendants, only two of whom signed [the agreement] containing arbitration clauses, can compel arbitration against any or all of the plaintiffs, only two of whom undisputedly signed those agreements.” Whether a nonsignatory can be bound to, or permitted to enforce, an arbitration agreement is a question for the court. The party seeking arbitration bears the burden to establish the arbitration agreement applies. The definitions of “us” and “we” and “our” in the parties’ agreement did not include the nonsignatories and therefore did not give the nonsignatories the power to compel arbitration. For direct benefits estoppel to apply “the party must seek ‘to derive a direct benefit’—that is, a benefit that ‘stems directly’—from that contract.” Under Texas law, it is “clear that direct benefits estoppel ‘does not apply’ when the duties at issue are imposed by other law, ‘even if the claim refers to or relates to the contract.’” The defendants did not provide the arguments or evidence that would allow the court to conclude that intertwined claims estoppel applied.

Motion to Confirm or Vacate Awards

Regis Corp v. Cthulhu Hair, Inc., No. 3:25-CV-1862-X, 2026 WL 2364716 (N.D. Tex. Aug. 14, 2026). Dismissed for lack of subject matter jurisdiction. The Federal Arbitration Act imposes a one-year statute of limitation on petitions to confirm arbitration awards. Here, the final arbitration award was entered on December 8, 2021, but the petition to confirm the award was filed July 16, 2025. The filing was outside the one-year period for seeking confirmation. “Accordingly, this Court lacks jurisdiction over the matter.”

Clayton v. Amazon.com Services, LLC, No. 3:25-CV-00269-G-BT, 2026 WL 2527359 (N.D. Tex. Aug. 11, 2026), report and recommendation adopted, 2026 WL 2525875 (Aug. 25, 2026). Application to vacate award dismissed for lack of jurisdiction. “On its face, a petition seeking vacatur of a zero-dollar arbitration award does not satisfy the amount-in-controversy requirement” for federal subject matter jurisdiction. The court “cannot look through” the complaint to the underlying claim or the amount allegedly sought in arbitration to establish jurisdiction.

Other Arbitration-Related Opinions

Lephand v. Trufund Fin. Servs, LLC, No. CV 26-235-SDD-RLB, 2026 WL 2454939 (M.D. La. Aug. 21, 2026). Motion to stay discovery granted. “When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.”

Miralles v. Experian Info. Sols., Inc., No. 1:24-CV-01205-DAE, 2026 WL 2446794 (W.D. Tex. Aug. 19, 2026) (Hightower, Mag. J.). Arbitration was not waived. This was a consumer arbitration before the American Arbitration Association (“AAA”). The AAA sent its invoice to an attorney for the defendant that had not entered an appearance in the case. The invoice was not paid and the arbitration was closed. Plaintiff argued that arbitration was waived. The court found the defendant “did not knowingly relinquish the right to arbitrate by acting inconsistently with that right. The record shows that neither counsel of record ever received the invoice.” The “failure to timely pay the filing fee was neither a default nor a waiver of its right to arbitrate because there is no evidence that [defendant’s] act inconsistent with that right was done knowingly.”

Opinion of the United States Bankruptcy Court

StopLoss Specialists, LLC v. Insured Advocacy Group LLC, No. 26-90386, 2026 WL 2235086 (Bankr. S.D. Tex. Aug. 3, 2026). Motion to compel denied. A party waives arbitration by substantially invoking the judicial process. A substantial invocation is found where a party engages “in some overt act in court that evinces a desire to resolve the arbitrable dispute through litigation rather than arbitration.” Seeking a decision on the merits before attempting to arbitrate results in waiver. In this case, the party’s continued pursuit of “adjudicative dismissal of this case with prejudice after taking the position that this dispute was arbitrable was inconsistent with its right to seek arbitral resolution.” A party “cannot request adjudication by this Court only to the extent that the Court provides it with favorable rulings while maintaining its right to arbitrate.”