

Arbitration in the Fifth - December 2024

January 9, 2025 Odean Volker

PRACTICES Litigation, International Arbitration

December 2024 was another slow month for arbitration-related opinions. Of interest, however, were the Fifth Circuit's *Matter of Clem*, that explores the application of collateral estoppel to findings in an arbitration award and the Eastern District of Texas' *Abebe v. Yum! Brands, Inc.*, that addresses practical procedural questions that arise after a court orders a jury trial on the validity of an arbitration agreement.

Opinions of the Fifth Circuit Court of Appeals

Matter of Clem, No. 22-11072, 2024 WL 5198585 (5th Cir. Dec. 23, 2024) (bankruptcy). "Like prior court judgments, prior 'arbitral decisions may have preclusive effect.'" For collateral estoppel to apply, the party asserting preclusion must show a final determination of the issue on the face of the arbitration award. In this case, "the structure of this arbitration award satisfies the collateral estoppel standard our court has repeatedly laid out: 'specific, subordinate, factual findings on the identical dischargeability issue in question.'"

Opinions of United States District Courts

Motions to Compel Arbitration

Hill v. J P Morgan Chase Bank, No. CV 24-00301, 2024 WL 5264385 (E.D. La. Dec. 31, 2024) (investment advisor). Motion to compel granted. The court applies ordinary state law principles of contract when deciding whether a valid agreement to arbitrate exists.

Dixie Motels, LLC v. Indep. Speciality Ins. Co., No. 6:21-CV-03022, 2024 WL 5191373 (W.D. La. Dec. 19, 2024) (insurance). Motion to compel denied. The court determined that Fifth Circuit precedent has held that La. R.S. 22:868 voids arbitration clauses contained in surplus lines insurance policies. The court rejected the argument that a delegation clause distinguished the current case from prior precedent. "[T]he question of delegation is secondary to the question of whether a valid arbitration agreement exists."

Other arbitration related opinions

Seiler Tucker Inc. v. Genie Investments, No. CV 23-7288, 2024 WL 5115985 (E.D. La. Dec. 16, 2024). Where respondent in arbitration did not pay its portion of the arbitral institution's fee and the case was closed by the arbitral institution "arbitration ha[d] been had in accordance with the terms of the [parties'] agreement."

Abebe v. Yum! Brands, Inc., No. 4:23-CV-682, 2024 WL 4953804 (E.D. Tex. Dec. 3, 2024) (employment). In a prior order, the court denied the employer's motion to compel arbitration and set the case for a jury trial regarding the validity of the arbitration agreement. The court determined that a motion to compel is not a responsive pleading for purposes of Rule 15(a). Therefore, plaintiff could freely amend without leave of court. The court's order denying arbitration and setting a jury trial on validity was not a merits decision. In this case, the jury will decide the merits. Also, under

the circumstances of the case, the defendant, which was concerned about waiver, was not required to file an answer.