

## Arbitration in the Fifth – December 2025

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January 20, 2026 Odean Volker

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**PRACTICES** International Arbitration, Litigation

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In December 2025, the Fifth Circuit Court of Appeals resolved multiple issues related to insurance arbitration in favor of nonarbitrability in *Town of Vinton v. Indian Harbor Ins. Co.*, while its decisions in *Mertens v. Benelux Corp.* and *Aramark Services, Inc. Group Health Plan v. Aetna Life Ins. Co.* serve as reminders of the importance of contract construction in reviewing arbitration agreements.

### Opinion of the Fifth Circuit

*Town of Vinton v. Indian Harbor Ins. Co.*, 161 F.4th 282, 285 (5th Cir. 2025). Order denying motion to compel affirmed. After initially suing both domestic and foreign insurers in Louisiana state court for breach of contract, plaintiff dismissed the foreign insurers with prejudice. The remaining domestic insurers removed. The district court denied their motion to compel. The Fifth Circuit reasoned that the endorsement in the insurance contract stated that the insurance policy is to be treated as a “separate contract” between the insured and each of the insurers. Therefore, there were “separate agreements to arbitrate from one arbitration clause.” Because the foreign insurers were no longer parties, there was no foreign party to any agreement to arbitrate in the case, and the New York Convention did not apply.

*Mertens v. Benelux Corp.*, 162 F.4th 492, 497 (5th Cir. 2025). Order denying motion to compel affirmed. Employer’s arbitration agreement was interpreted to require the signature both the employer and the employee to be binding. The employer did not sign. Specific conditional phrases are not required to create a condition precedent to contract formation. Here, the agreement provided that “[b]y signing this arbitration agreement, Employee and the Club’s Representative represent that,” followed by three provisions starting with the word ‘they’.” The word “they” indicated that both parties’ signatures were necessary.

*Aramark Servs, Inc. Grp. Health Plan v. Aetna Life Ins. Co.*, 162 F.4th 532, 536 (5th Cir. 2025). Determination that the arbitration clause did not delegate arbitrability was affirmed. The parties’ agreement provided:

Any controversy or claim arising out of or relating to this Agreement or the breach, termination, or validity thereof, except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration in Hartford, CT, administered by the American Arbitration Association (“AAA”) and conducted by a sole arbitrator in accordance with the AAA’s Commercial Arbitration Rules (“Rules”)... The arbitrator may award only monetary relief and is not empowered to award damages other than compensatory damages.

Courts apply a heightened standard when determining whether the parties agreed to arbitrate arbitrability requiring “clear and unmistakable” evidence. Due to the placement of the exceptive clause, the court determined that delegation was not clear and unmistakable.

### Opinions of United States District Courts

### **Motions to Compel Arbitration**

*Brolin v. Capital One, N.A.*, No. CV 25-1944, 2025 WL 3628152 (E.D. La. Dec. 15, 2025) (deb collection). Motion to compel granted. Plaintiff argued that he did not receive the credit card agreement that contained the arbitration clause because he had moved from the address to which it was mailed a year before. Pursuant to South Dakota law, use of a credit card constitutes consent to the card agreement, regardless of whether or not the card agreement was received by plaintiff.

*Siefke v. Toyota Motor N. Am., Inc.*, No. 4:25-CV-406, 2025 WL 3461549 (E.D. Tex. Dec. 2, 2025) (data collection). Motion to compel granted. Automobile purchasers were required to download an app, register and agree to applicable terms and conditions to access certain services. The terms and conditions included an arbitration clause and was deemed a “sign-in-wrap” agreement. Sign-in-wraps are agreements that “notify the user of the existence of the website's terms of use and, instead of providing an ‘I agree’ button, advise the user that he or she is agreeing to the terms of service when registering or signing up.” Courts “typically enforce sign-in-wraps where the user had reasonable notice of the existence of the terms” from the perspective of a “reasonably prudent smartphone user.” The incorporation of the American Arbitration Association rules was “clear and unmistakable evidence” of delegation. Equitable estoppel allows a nonsignatory to compel arbitration in two different circumstances. First, equitable estoppel applies when the signatory must rely on the terms of the written agreement in asserting its claims against the nonsignatory. Second, equitable estoppel is warranted when the signatory raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Arbitration was compelled as to the nonsignatory insurance company that was alleged to have purchased driver data.

*Panchumarthi v. Tech Mahindra*, No. 4:24-CV-01017-SDJ-BD, 2025 WL 3687142 (E.D. Tex. Dec. 15, 2025) (Daivs, Mag. J.) (employment). Motion to compel granted. Filing a charge with the EEOC does not trigger an arbitration agreement, and failing to invoke an arbitration agreement in proceedings before the EEOC does not waive the right to arbitrate. The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act does not apply to all sex-discrimination claims. “It applies only to sexual-assault and sexual harassment claims.”

*Hurt v. Comenity Cap. Bank*, No. 4:25-CV-00555-SDJ-BD, 2025 WL 3778941 (E.D. Tex. Dec. 29, 2025) (Davis, Mag. J.), report and recommendation adopted, 2026 WL 37434 (Jan. 6, 2026) (credit card). Motion to compel granted. Defendant did not waive arbitration by answering in state court, removing to federal court and then moving to compel arbitration.

*Brown v. Brown*, No. 2:25-CV-028-Z, 2025 WL 3641174 (N.D. Tex. Dec. 16, 2025) (alleged misapplication of investor funds). Plaintiff was not a signatory to the defendant limited liability company's operating agreement. The court determined that the agreement may be enforceable under one or more doctrines that bind non-signatories. “The doctrine of equitable estoppel prevents the non-signatory from accepting the benefits of the agreement without also accepting its burdens.” Direct benefit estoppel applied because plaintiff was suing to enforce the operating agreement.

### **Motions to Confirm or Vacate an Award**

*Amir v. Bayway Auto Grp.*, No. 4:25-CV-478, 2025 WL 3707568 (S.D. Tex. Dec. 22, 2025). Award confirmed. General allegations are not sufficient to establish the strict “evident partiality” standard required by the Fifth Circuit. An arbitration award may not be set aside for a mere mistake of fact or law.

*Leach v. HEB*, No. SA-23-CA-01428-XR, 2025 WL 3709024 (W.D. Tex. Dec. 19, 2025). Award confirmed. “Arbitration awards can only be vacated under specific circumstances. Plaintiff provides only her subjective belief and conclusory statements that any of these exceptions apply. The arbitrator heard evidence in the matter and issued a written report of her conclusion. Even if Plaintiff believes that the arbitrator was mistaken in her evaluation of the witnesses and facts, that is not grounds for vacating an arbitral award.”

*Carter & Carter Constr. LLC v. Masram Mech. LP*, No. 3:25-CV-00517-X, 2025 WL 3852944 (N.D. Tex. Dec. 19, 2025) (Rutherford, Mag. J.), report and recommendation adopted, 2026 WL 30834 (Jan. 5, 2026). Award confirmed. Defendant did not appear in the confirmation proceeding. The court noted that “the arbitrator awarded post-award interest rather than post-*judgment* interest, and thus, the post-award interest is not subject to the statutory rate set forth in 28 U.S.C. § 1916(a).” (emphasis original).