Arbitration in the Fifth – February 2026

March 16, 2026

PRACTICES Litigation, International Arbitration

In February 2026, the Fifth Circuit considered and applied the "effective vindication doctrine" to ERISA claims asserted in *Parrott v. Int'l Bancshares Corp.*

Opinion of the Fifth Circuit

Parrott v. Int'l Bancshares Corp., No. 25-50367, 2026 WL 364324 (5th Cir. Feb. 10, 2026). Plaintiff was a participant in his employer's ERISA-governed retirement plan. Three years after his employment, an arbitration clause and class action waiver were added to the Plan. Plaintiff asserted individual claims, class action claims and claims derivatively on behalf of the Plan. The Plan was found to have "consented" to the amendment, so claims asserted derivatively were arbitrable. Plaintiff did not consent to arbitration, so his individual claims were not subject to the arbitration amendment. The "effective vindication doctrine" requires a court "to invalidate arbitration agreements that 'operat[e] ... as a prospective waiver of a party's right to pursue statutory remedies'." The doctrine "reaches provisions in an arbitration agreement forbidding the assertion of certain statutory rights" and is an exception to the Federal Arbitration Act's policy in favor of arbitration. The class action waiver that was added the Plan provided that "[a]ll Covered Claims must be brought solely in the Arbitration Claimant's individual capacity and not in a representative capacity or on a class, collective, or group basis." The court held that this "requirement is facially at odds with the statutory text of [29 USC § 1109] and the remedy it provides." The court also voided a "standard of review" provision in the Plan to the extent that it purported to reach breach of fiduciary duty claims finding that it was an "unlawful exculpatory provision."

Opinions of United States District Courts

Motions to Compel Arbitration

Sangisetty Law Firm, LLC v. Jason Joy & Assoc., PLLC, No. CV 25-1561, 2026 WL 496627 (E.D. La. Feb. 23, 2026) (joint representation agreement). Motion to compel granted. A party can waive its right to arbitration when the party "knowingly relinquish[es] the right to arbitrate by acting inconsistently with that right." Substantial invocation of the judicial process requires that a "party must, at the very least, engage in some overt act in court that evinces a desire to resolve the arbitrable dispute through litigation rather than arbitration." Generally, however, there exists a presumption against finding waivers. Emailing copies of subpoenas duces tecum did not constitute substantial invocation.

Smith v. TD Auto Fin. LLC, No. 3:25-CV-00312-JDM-RP, 2026 WL 411723 (N.D. Miss. Feb. 13, 2026) (auto finance). Motion to compel granted. Plaintiff signed a credit application that contained an acknowledgment of the parties' agreement to arbitrate. The agreement to arbitrate was in a different document that plaintiff did not sign. "That [plaintiff's] signature is not on the page with the arbitration contract's terms does not change the fact he executed the entire credit application containing the contract's terms." "[M]erely removing an action to federal court and seeking to compel arbitration under an arbitration agreement does not sufficiently invoke the judicial process to constitute waivers."

Simmons v. BancorpSouth Bank, No. 1:25-CV-00114-JDM-RP, 2026 WL 508814 (N.D. Miss. Feb. 24, 2026) (employment). Motion to compel granted. The employment offer letter signed by plaintiff contained an arbitration clause. Plaintiff asserted that she was not aware of the arbitration provision in the letter. Under Mississippi law, parties "have an inherent duty to read the terms of a contract prior to signing." Plaintiff's "failure to read or ask questions about the offer letter before signing it does not negate her assent to its terms—including the arbitration provision."

Archie v. Crawford & Co., No. 4:25-CV-57, 2026 WL 263297 (E.D. Tex. Feb. 2, 2026) (employment). Motion to compel granted in part. The parties' agreement provided that issues related to "the interpretation, applicability, or enforceability of this Agreement shall be resolved by final and binding arbitration." "This language constitutes clear and unmistakable evidence that the parties agreed to delegate issues of arbitrability to the arbitrator." Under Texas law, procedural and substantive conscionability challenges go to enforceability and not contract formation and therefore may be delegated to the arbitrator. "If the issue of conscionability is raised to attack the entire arbitration clause itself, rather than the validity or enforceability of the delegation clause in particular, it should ordinarily be resolved by the arbitrator and not the Court." The delegation clause is a specific "agreement to arbitrate arbitrability." A stay of the legal proceedings not compelled to arbitration is appropriate where the following elements are met: (1) the arbitrated and litigated disputes involve the same operative facts, (2) the claims asserted in the arbitration and litigation are inherently inseparable and (3) the litigation will have a critical impact on the arbitration.

Hunsinger v. Parking Revenue Recovery Servs Inc., No. 3:25-CV-1606-G-BT, 2026 WL 368558 (N.D. Tex. Feb. 6, 2026) (Rutherford, Mag. J.) (parking fees/debt collection). Motion to compel granted. Plaintiff admitted parking in the lot and paying a portion of the fee. Plaintiff denied seeing signs posted at the lot that contained an agreement to arbitrate. Although plaintiff argued he did not see the sign, "the sign, and its arbitration provision, was 'reasonably conspicuous' and [plaintiff] was therefore charged with notice of these terms."

Gallegos v. Wal-Mart Stores Tex., LLC, No. SA-25-CA-00641-XR, 2026 WL 300793 (W.D. Tex. Jan. 28, 2026) (employee personal injury). Motion to compel granted. "When the arbitration agreement delegates the question of arbitrability to an arbitrator, 'a court possesses no power to decide' whether the parties' dispute falls within the scope of the agreement." Plaintiff agreed to arbitration as part of her employment documentation. She contended that her injury did not occur in the course and scope of her employment. "That is a question of the arbitration agreement's scope, not its existence or validity."

Balderrama v. Deployed Services, LLC, No. EP-25-CV-00214-KC, 2026 WL 301071 (W.D. Tex. Jan. 28, 2026) (Bergon Mag. J.) (employment). Motion to compel granted. Under Texas law, an electronic signature holds the same validity as a handwritten, wet-ink signature. The act of the person "may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person" during the electronic transaction. Defendant employer provided evidence of its process and that plaintiff "could only access the onboarding packet by logging into [the employer's] recruiting system using the profile that she created on the system."

Santos v. Mattress by Appointment LLC, No. 1:25-CV-01741-ADA, 2026 WL 471820 (W.D. Tex. Feb. 2, 2026) (Howell, Mag. J.), report and recommendation adopted, 2026 WL 466768 (Tex. Feb. 17, 2026) (dealership agreement). Motion to compel granted. The parties' agreement stated that "[t]he arbitrator will have exclusive authority to resolve all disputes relating to the interpretation, applicability, enforceability, or formation of this Agreement, including without limitation, challenges to venue and/or personal jurisdiction." This language was sufficient to delegate gateway questions of arbitrability to the arbitrator.

Motions to Confirm or Vacate an Award

Leyb v. Tinder LLC, No. 3:25-CV-3059-K, 2026 WL 280181 (N.D. Tex. Feb. 3, 2026). Dismissed for lack of subject matter jurisdiction. The federal courts cannot apply a "look-through approach" to determine subject matter jurisdiction on a petition to confirm, vacate or modify an arbitration award under Section 9 or 10 of the Federal Arbitration Act. On a petition to vacate, affirm or modify an arbitration award, "the issue before the court is the enforceability of the arbitration award, not the underlying issues in the arbitration."

Hernandez v. St. Vincent DePaul Rehab. Servs, No. 1:24-CV-1187-RP, 2026 WL 300779 (W.D. Tex. Jan. 28, 2026). Plaintiff complained that the arbitration had become "fundamentally unfair due to Defendant's refusal to comply with the Arbitrator's discovery orders." Plaintiff's challenge was to the fairness of her ongoing arbitration proceeding, and the "Court is bound by the Fifth Circuit's holding that it has 'no authority under the FAA to entertain' such a challenge prior to the issuance of the arbitral award."