

## Arbitration in the Fifth - January 2025

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**PRACTICES** International Arbitration, Litigation

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Leading opinions issued in Jan. 2025 provide important guidance for drafting arbitration clauses. In *Baker Hughes Saudi Arabia Co. Ltd. v. Dynamic Indus., Inc.*, the Fifth Circuit meticulously parsed the parties' clause finding they agreed to a set of rules but not administration by the promulgating institution. In *Ahmed v. Universal Prot. Serv., LP*, the Southern District of Texas found that the parties' waiver of an arbitration provision also waived enforcement of a contractual jury waiver. Meanwhile, the Eastern District of Louisiana revisited some of its insurance-related rulings following a decision by the Louisiana Supreme Court.

### Opinions of the Fifth Circuit Court of Appeals

*Ashley v. Clay Cnty.*, 125 F.4th 654 (5th Cir. 2025). District court's order denying as moot a county's motion to dismiss that raised governmental immunity was an appealable order. "Governmental immunity from suit, after all, is no ordinary defense; it operates as a jurisdictional bar, depriving a trial court of authority to proceed." The district court erred "by not resolving challenges to its jurisdiction before deciding arbitrability."

*Matter of Clem*, 124 F.4th 341 (5th Cir. 2024). Like prior court judgments, prior "arbitral decisions may have preclusive effect." As to certain aspects, the award at issue satisfied the collateral estoppel standard: "specific, subordinate, factual findings on the identical dischargeability issue in question."

*Baker Hughes Saudi Arabia Co. Ltd. v. Dynamic Indus., Inc.*, No. 23-30827, 2025 WL 304463 (5th Cir. Jan. 27, 2025). Order denying the motion to compel was reversed and case remanded. The parties had agreed the "the dispute shall be referred by either Party to and finally resolved by arbitration under the Arbitration Rules [of the DIFC-LCIA Arbitration Centre (the "DIFC-LCIA")]" and seated at "the DIFC, Dubai, United Arab Emirates." After the agreement was signed, the DIFC-LCIA was abolished by government Decree. The Decree deemed as valid preexisting agreements to arbitrate with the DIFC-LCIA, and the newly formed Dubai International Arbitration Centre (DIAC) was appointed to administer such proceedings. The Fifth Circuit closely parsed the parties' agreement and determined that they had agreed "to arbitration" under the DIFC-LCIA Rules but had not designated administration by the DIFC-LCIA. "Courts have explained that words like 'administered by' signal a clear intent to designate a forum, whereas words like 'in accordance with' signal only an intent to set the rules." The court declined to adopt a "blanket rule that any designation of arbitral rules necessarily means selection of a forum." Even if the parties had impliedly designated the DIFC-LCIA as the arbitral forum, and it was unavailable, "the court can appoint a substitute arbitrator [9 USC §5], unless the forum-selection clause sets an exclusive forum and that clause is 'integral' to the parties' arbitration agreement." Where the parties' "dominant purpose was not to set an exclusive forum and instead was to arbitrate generally, courts will compel arbitration in an alternate forum." On remand, the district court was instructed: "[T]o consider whether the DIFC-LCIA rules can be applied by any other forum that may be available—including the LCIA, DIAC, or a forum in Saudi Arabia—consistent with the parties' objective intent. If so, we instruct the district court to compel arbitration in that forum."

## **Opinions of United States District Courts**

### **Motions to Compel Arbitration**

*Certain Underwriters at Lloyd's London v. Belmont Commons LLC*, No. CV 22-3874, 2025 WL 239087 (E.D. La. Jan. 17, 2025) (insurance). Order compelling arbitration as to domestic insurers vacated. *Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.*, 395 So. 3d 717 (La. 2024), reh'g denied, 397 So. 3d 424 (2024) held that La. Revised Statute § 22:868(A) operates to invalidate arbitration clauses in insurance contracts. The Fifth Circuit and the Louisiana Supreme Court directly disagree about whether equitable estoppel can be used to subject domestic insurers to the New York Convention and thereby permit enforcement of an arbitration clause. Since “state law, not federal law, governs the application of equitable estoppel principles,” the court followed the Louisiana Supreme Court’s holding that equitable estoppel could not be used to compel arbitration as to the domestic insurers. “Overall, the Court concludes that whether a plaintiff can be compelled to arbitrate with a domestic insurer based on the plaintiff’s arbitration agreement with a foreign insurer is a matter of state law, not federal law.”

*Crescent City Surgical Operating Co. v. Certain Underwriters at Lloyd's, London*, No. CV 22-2625, 2025 WL 239404 (E.D. La. Jan. 17, 2025) (insurance). Order compelling arbitration as to domestic insurers vacated. Presence of foreign underwriters was not “important foreign element” that would support application of the New York Convention to domestic insurers. The foreign insurers’ independent decision to engage with a foreign insurance market had no bearing on the domestic insurers’ separate contracts. The “mere consolidation of separate insurance contracts into a single policy document that just so happens to include a foreign insurer is insufficient to prove a ‘reasonable relationship’ to a foreign state worthy of subjecting a domestic insurer to the Convention.”

*Lambert v. Leidos, Inc.*, No. 4:24-CV-00911-P, 2025 WL 242247 (N.D. Tex. Jan. 16, 2025) (employment). Motion to compel granted. Employee “signed” the arbitration agreement electronically during his onboarding process. “Texas law specifically permits a party to prove the electronic execution of a contract through evidence of a reliable electronic security procedure.” Also under Texas law, “electronic-timestamp data attached to arbitration agreements conclusively established that the employees signed the agreements.” “It is almost certain that almost all people living in the modern age have electronically signed documents they do not remember signing. For better or worse, computers usually remember such mundane actions where human memories fail.”

*Healthpro Pharmacy & Wellness Ctr. v. OptumRx Inc.*, No. 3:24-CV-01878-N, 2025 WL 307696 (N.D. Tex. Jan. 27, 2025) (pharmacy network agreements). Motion to compel granted. Non-signatory compelled to arbitration under direct benefits estoppel. Under Texas law, “a nonparty may be compelled to arbitrate if it deliberately seeks and obtains substantial benefits from the contract’ containing the arbitration provision.”

*Emily's Place, Inc. v. Regions Bank*, No. 3:24-CV-1251-B, 2025 WL 347051 (N.D. Tex. Jan. 30, 2025) (banking). Motion to compel granted. Plaintiff had seven accounts with the bank and had arbitration agreements with those accounts. An eighth account was opened by a former officer who allegedly embezzled plaintiff’s funds. The arbitration agreements for the eight accounts applied to disputes relating to any “any account.” Because the dispute involved one of plaintiff’s accounts the dispute related to the arbitration agreement.

### **Other arbitration related opinions**

*Arrive Nola Hotel, LLC v. Certain Underwriters at Lloyds, London*, No. CV 24-1585, 2025 WL 257915 (E.D. La. Jan. 22, 2025). Motion to remand denied. The action was properly removed as falling under the New York Convention. “A federal court may determine its jurisdiction under the Convention Act ‘from the petition for removal, without taking evidence and *without a merits-like inquiry*.’” (emphasis original). Plaintiffs “merit based” arguments against enforcement of the arbitration clause were not considered in deciding the motion to remand.

*Warner as Tr. of Cox Operating LLC v. Miller Ins. Services, LLP*, No. CV 24-2864, 2025 WL 261837 (E.D. La. Jan. 22, 2025). Motion to remand granted. The action was removed as falling under the New York Convention. On review of the insurance agreement, the court determined that “the formalities of arbitration are missing” and that “Fifth Circuit precedent dictates the provision's treatment as an appraisal clause.” In the absence of an arbitration clause, “the New York Convention does not apply.” Further, the court held that since the clause at issue was permissive, and not mandatory, the New York Convention was inapplicable.

*Kingman Holdings, LLC v. Blackboard Ins. Co.*, No. CV 23-4525, 2025 WL 275505 (E.D. La. Jan. 23, 2025). Motion to amend petition to vacate award denied. “[C]ourts within the Fifth Circuit have held that, to establish that an arbitrator's denial of a continuance deprived one of a fair hearing, plaintiff must, at the very least, represent ‘that a continuance might have altered the outcome of the arbitration.’ Conclusory allegations of prejudice are insufficient. Further, when there is a reasonable basis for the arbitrators to refuse to postpone the hearing, the decision must be upheld.” (citations omitted)

*Ahmed v. Universal Prot. Serv., LP*, No. CV 23-2823, 2025 WL 43345 (S.D. Tex. Jan. 7, 2025) (employment). Plaintiff “signed employment documents that included a six and one-half page document entitled ‘Arbitration Policy and Agreement.’” The agreement included a waiver of trial by jury. Neither party sought to enforce the arbitration agreement. Therefore, they “waived the right to enforce that agreement, including the jury waiver part of the agreement.”

*Garza v. Armstrong*, No. 3:22-CV-00418, 2025 WL 339029 (S.D. Tex. Jan. 30, 2025) (Edison, Mag. J.) (FLSA). Motion for distribution of FLSA notice denied. Under Texas law, “parties to an arbitration agreement may not evade arbitration through artful pleading, such as by naming individual agents of the party to the arbitration clause and suing them in their individual capacity.”