Arbitration in the Fifth – July 2025

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PRACTICES Litigation, International Arbitration

In July 2025, the Fifth Circuit Court of Appeals considered enforcement of an arbitration agreement contained in an attorney representation agreement, and in *Barnett v. Am. Express Nat'l Bank,* the court of appeals reiterated its holding that waiver is claim specific.

Opinions of the Fifth Circuit Court of Appeals

Thompson v. Buzbee, No. CV 24-2827, 2025 WL 2050955 (E.D. La. July 22, 2025) (legal services). Order compelling arbitration affirmed. The arbitration provision at issue provided in relevant part that "Client agrees that any dispute whatsoever arising out of this agreement, including disputes regarding fees or the proper and reasonable rendition of legal services, will be resolved by arbitration, to take place in Harris County." Even assuming that the provision is one-sided, the court determined that the arbitration provision was not illusory. "Promises are illusory and unenforceable if they lack bargained-for consideration because they failed to bind the promisor." Under Texas law, "[t]he mere fact that an arbitration provision is one-sided does not make it illusory." Because the arbitration provision at issue was part of the broader representation contract, "consideration, or the presence of mutual obligation, is provided by the underlying contract." Because the motions for sanctions and to strike allegations in the complaint preceded "the motion for a stay pending arbitration, targeted only ancillary matters, and did not seek a ruling on the merits, they do not 'evince[ ] a desire to resolve' the merits of this case 'through litigation rather than arbitration.'"

Barnett v. Am. Express Nat'l Bank, No. 24-60391, 2025 WL 2143697 (5th Cir. July 29, 2025) (per curiam) (credit card services). Order denying motion to compel reversed. Credit card company filed a claim in state court over disputed charges. The claim was dismissed for failure to prosecute. Approximately one year later, the cardholder sued the company alleging violations of the Fair Credit Reporting Act ("FCRA"). The district court denied the company's motion to compel after finding waiver. The court of appeals reiterated that "[f]or waiver purposes, a party only invokes the judicial process to the extent it litigates *a specific claim* it subsequently seeks to arbitrate." In order to invoke the judicial process, "a party must have litigated the claim that the party now proposes to arbitrate." The court found that the claim for disputed charges was "undoubtedly a different claim" than the FCRA action.

Opinions of United States District Courts

Motions to Compel Arbitration

Alexander v. Experian Info. Sols., Inc., No. 4:24-CV-93, 2025 WL 1840599 (E.D. Tex. July 3, 2025) (Fair Credit Reporting Act). Motion to compel granted. Plaintiff opened an account online. The process included the admonishment: "By clicking 'Create Your Account': I accept and agree to your Terms of Use Agreement, as well as acknowledge receipt of your Privacy Policy." The Terms of Use appeared as a "hyperlink, offset and in bold, blue text" and the Terms of Use included an arbitration agreement. "Generally, Texas law holds internet agreements are enforceable" though different analyses apply to clickwrap, browsewrap and sign-in-wrap agreements.

Crosby v. Compass Group USA, Inc., No. 4:24-CV-777, 2025 WL 1840602 (E.D. Tex. July 3, 2025) (employment). Motion to compel denied without prejudice. A party moving to compel arbitration must present evidence sufficient to demonstrate an enforceable agreement to arbitrate. The burden then shifts to the nonmovant to raise a genuine issue of material fact as to the existence or validity of the arbitration agreement. To do that, the nonmovant must make at least some showing that under prevailing law they would be relieved of their obligation to arbitrate if their allegations proved to be true and must produce some evidence to substantiate their factual allegations. Without corroborating evidence, self-serving affidavits will not suffice. Here, the employer stated that once the employee inserted her electronic signature on the documents, the hiring manager signed them. After that, the documents were archived in a secure database. The court found that these processes were sufficient to show that the electronic signature is attributable to the employee. However, the employee alleged that the hiring manager "was the person who reviewed documents in the onboarding process and clicked through any acknowledgement that documents were received, not me." The court found this sufficient to raise an issue as to the validity of the arbitration agreement. Discovery was authorized to determine if the agreement was valid.

Tobey v. Ace Parking Mgmt., Inc., No. 3:24-CV-2932-X, 2025 WL 1919887 (N.D. Tex. July 11, 2025) (parking services). Motion to compel granted. Commercial parking lots signs read in part: "By parking on this Facility, you hereby agree that the sole remedy for all unresolved disputes is binding arbitration and specifically waive the right to a jury trial, class action and/or class arbitration." Signs were sufficient and contract did not fail for lack of consideration, mutuality, conspicuousness, or definiteness. Claims against nonsignatory owner or operator of the lot were compelled based on intertwined estoppel.

Luckett v. Uber Techs., Inc., No. 3:25-CV-1092-G-BW, 2025 WL 1919889 (N.D. Tex. July 2, 2025) (McKay, Mag. J.), report and recommendation adopted, No. 3:25-CV-1092-G-BW, 2025 WL 1919882 (N.D. Tex. July 11, 2025) (gig economy services). Motion to compel granted. Plaintiff entered into the driver Platform Access Agreements ("PPA") and subsequently entered into other PPAs for other services. Plaintiff opted out of the arbitration clause under one PPA, but not others. Plaintiff's challenge to the PPA didn't include a specific attack on the delegation clause.

Johnson v. Discover Financial Servs LLC, No. 3:25-CV-241-E-BN, 2025 WL 2181695 (N.D. Tex. July 14, 2025) (Horan, Mag. J.). Motion to compel granted. The court would not "permit [plaintiff] to weaponize her misnomer [of the defendant] to avoid arbitration because she contracted with [defendant] and the arbitration provision of that contract also applies to [defendant's] affiliates.

CGM, S.A. v. GCC Supply & Trading L.L.C., No. CV H-25-1320, 2025 WL 1837561 (S.D. Tex. July 3, 2025) (sale of marine fuel). Motion to compel granted. Under the FAA, "an arbitration provision is severable from the remainder of the contract." Therefore, the court concluded that the parties' email exchanges represented an offer and acceptance of an arbitration agreement.

Motions to Confirm/Vacate an Award

Gooden v. Santander Consumer USA, Inc., No. CV 24-775, 2025 WL 1866032 (E.D. La. July 7, 2025). Motion to vacate denied and confirmation granted. "[S]imply stating in a conclusory fashion that the arbitrator 'ignored' evidence is insufficient to meet . . . [movant's] burden . . . as movant to vacate the arbitral award on this basis."

Valentini v. StoneX Fin., Inc., No. 4:24-CV-02902, 2025 WL 2146863 (S.D. Tex. July 29, 2025). Motion to confirm granted and motion to vacate denied. Section 10 of the FAA provides the exclusive statutory grounds for vacatur of an arbitration award. A party may not pursue vacatur

under the Uniform Declaratory Judgment Act. Plaintiff filed their petition to vacate in state court seven days after issuance of the award, and served the petition "95 days after filing the petition and 102 days after the award." Plaintiff filed a separate motion to vacate after the case was removed to federal court. "Section 12 [of the FAA] requires that '[n]otice of a motion to vacate ... an award must be served upon the adverse party ... within three months after the award is filed or delivered.'"

Other arbitration-related opinions

Soojay v. WorldVentures Holdings LLC, No. 4:18-CV-00580-ALM-BD, 2025 WL 1904139 (E.D. Tex. July 9, 2025) (Davis, Mag. J.), report and recommendation adopted, No. 4:18-CV-00580, 2025 WL 2163753 (E.D. Tex. July 30, 2025). Dismissed with prejudice for want of prosecution. Six years after the motion to compel was granted and after the parties did not update the court about the arbitration process, the case was dismissed.

Herod v. DMS Sols. Inc., No. 4:23-CV-04465, 2025 WL 1937201 (S.D. Tex. July 15, 2025) (Edison, Mag. J.). The court had previously compelled arbitration under the parties' agreement which called for "bilateral arbitration." Defendant moved for an order clarifying that the court's order foreclosed collective arbitration. "The phrase 'bilateral arbitration' is—as a matter of plain English, common sense, and law—incompatible with collective arbitration, irrespective of (1) whether the class and collective action waiver in the parties' agreement was terminated; or (2) whether the parties delegated collective action arbitrability to an arbitrator."

KCK Ltd. v. Identity Intelligence Group, LLC, No. 3:25-CV-045-L-BW, 2025 WL 2044628 (N.D. Tex. July 7, 2025) (McKay, Mag. J.), report and recommendation adopted sub nom. *KCK Ltd. v. Norris*, No. 3:25-MC-047-B-BW, 2025 WL 2043949 (July 21, 2025) and report and recommendation adopted sub nom. *KCK Ltd. v. Americor Funding, LLC*, No. 3:25-MC-048-K-BW, 2025 WL 2223243 (Aug. 5, 2025). Motion to enforce arbitral summonses denied. For a motion to enforce an arbitral summons, parties are required to allege an independent basis for jurisdiction. The amount in controversy requirement for subject matter jurisdiction "cannot be shown by merely pointing to the value of the underlying arbitration." Jurisdiction has been accepted "where a petitioner alleged that the value of the information and testimony sought by the arbitration subpoenas exceeded $75,000." "[A]n arbitrator's authority to command a non-party to produce documents may be exercised only in connection with a command to appear to provide testimony." Section 7 of the FAA "does not authorize an arbitrator to issue a summons requiring a person only to produce documents."