Arbitration in the Fifth – May 2026

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PRACTICES International Arbitration, Litigation

In May 2026, the Supreme Court's decision in *Jules v. Andre Balazs Properties* confirmed the jurisdiction of a district court to hear applications to confirm or vacate awards in cases previously stayed by the district court pending arbitration. In *Flowers Foods, Inc. v. Brock*, the Supreme Court again addressed the reach of the transportation workers exception. In a case of first impression, the Fifth Circuit Court of Appeals' decision in *Hill v. Jackson Offshore Holdings, L.L.C.* determined that the court has jurisdiction over appeals of orders denying arbitration "without prejudice."

Opinions of the Supreme Court

Jules v. Andre Balazs Properties, 146 S. Ct. 1209 (2026). A federal court that has previously stayed claims in a pending action under Section 3 of the Federal Arbitration Act (the "FAA") has jurisdiction to confirm or vacate a resulting arbitral award for those claims under Sections 9 and 10. This is because "a federal court in this scenario has jurisdiction over the original claims and does not lose that jurisdiction while the case is stayed pending arbitration, it retains jurisdiction to determine whether the arbitral award resolving those claims is valid and should be confirmed."

Flowers Foods, Inc. v. Brock, 146 S. Ct. 1358, 1362 (2026). Defendant "is one of the nation's largest producers of packaged baked goods." Plaintiff is a franchisee who bought the right to distribute defendant's products in the Denver area. Plaintiff picks up defendant's "products from a warehouse in Colorado and delivers them to local stores, all without leaving the state." The Court granted certiorari to answer one question: "whether someone can qualify as a worker 'engaged in... interstate commerce' under § 1 if he never crosses state lines and never interacts with vehicles that do." Section 1 does not require workers to cross state lines. Further, Section 1 does not "turn on a game of tag with vehicles that do. At least sometimes, a worker who transports goods on an intrastate leg of an interstate journey can qualify for § 1's exemption without satisfying either of those criteria." The court was not asked to decide the legal significance of plaintiff's status as in independent contractor, or find that plaintiff took title to goods before selling them to local stores.

Opinions of the Fifth Circuit

Hill v. Jackson Offshore Holdings, L.L.C., 175 F.4th 324 (5th Cir. 2026). Order denying motion to compel vacated. In Section 16(a) of the FAA, "Congress provided for immediate interlocutory appeals of orders denying—but not of orders granting—motions to compel arbitration." In this case, the district court denied the motion to compel "without prejudice." The court of appeals had jurisdiction to hear the appeal "irrespective of the fact that the motion was denied without prejudice." Addressing severability and a challenge to the arbitration clause, the court explained:

> [I]f a party seeking arbitration points to a delegation clause that reserves contract validity questions for the arbitrator, then the opposing party's arguments contesting the validity of the contract as a whole go to the arbitrator. But if there is an agreement to arbitrate with a delegation clause, and absent a challenge to the delegation clause itself, we will consider that clause to be valid and compel arbitration. Although this rule does not require that a party challenge only the arbitration or delegation provision, a party seeking to avoid arbitration must

> directly challenge the arbitration or delegation clause, not just the contract as a whole. (internal citations and quotations omitted)

A party does not specifically challenge the severable arbitration agreement where their argument does not "distinguish between their attacks on the validity of the [broader] agreements and the arbitration clauses themselves," but instead "assert[ed] only that they would not have entered into the [broader] agreements containing the arbitration clauses" had the other party not made alleged misrepresentations.

Global Advantech Res. Ltd. v. Brown, No. 25-20413, 2026 WL 1483966 (5th Cir. May 27, 2026). "Surely a party's repeated requests for dismissal with prejudice, unaccompanied by any reservation of a right to seek arbitration in its motions, or in one of the thirty-two affirmative defenses asserted in its answer, signal a desire to resolve an arbitrable dispute through litigation." The defendants "have had the three-page [Nondisclosure Agreement] from the outset of this litigation. And from the filing of their first motion, the [defendants] have insisted that [plaintiff's] claims seek to hold the [defendants] liable in tort for alleged breaches of the NDA. Furthermore, the agreement's arbitration clause is easily found. In fact, it is on the same page (two) as the allegedly violated non-disclosure and non-circumvention provisions. Thus, cases finding no waiver of arbitration where the moving party reasonably had been unaware of an arbitration agreement, but promptly sought to enforce it upon discovery, have no application here."

Opinions of United States District Courts

Motions to Compel Arbitration

In re TSB Ventures, LLC, No. 25-1992, 2026 WL 1345860 (E.D. La. May 14, 2026) (bankruptcy). Bankruptcy court's order denying arbitration affirmed. The Bankruptcy Code can serve as a Congressional mandate superseding the FAA with respect to "core" bankruptcy matters. "A bankruptcy court has discretion to refuse to compel arbitration when the subject of the arbitral proceeding derives exclusively from the bankruptcy code and arbitration conflicts with the purpose of the code."

Monteleone v. CMH Homes, Inc., No. CV 26-494, 2026 WL 1429041 (E.D. La. May 21, 2026) (manufactured housing). Motion to compel granted in part and denied in part. The FAA puts arbitration agreements on the same footing as other contracts. Under Louisiana law, courts consider four factors in determining whether a contract is adhesionary: "(1) the physical characteristics of the arbitration clause; (2) the distinguishing features of the arbitration clause; (3) the mutuality of the arbitration clause; and (4) the relative bargaining strength of the parties." The arbitration agreement was not adhesionary, as it was conspicuous and mutuality was not destroyed by other provisions. Plaintiff did not show that "she did not have adequate bargaining strength or the capacity to read and understand the policy terms before agreeing to them." Under Louisiana law, "tutors of minors cannot bind minors to arbitration without court authorization." Therefore, "in the face of positive law prohibiting binding minors to arbitration without a court order," the court denied the motion to compel as to claims brought on behalf of minor children.

Bruening v. Onemain Fin. Group, LLC, No. CV 25-2569, 2026 WL 1429003 (E.D. La. May 21, 2026) (lending). Motion to compel granted. "Because plaintiff's arguments do not 'attack the existence of a contract between the parties, the existence of an agreement to arbitrate between the parties, or the validity of the delegation clause, the court honors the agreement to delegate and compels plaintiff's arguments to arbitration." (internal citations omitted).

Davenport v. Irving Place Associates LP, No. CV 25-1422, 2026 WL 1333449 (W.D. La. May 13, 2026) (personal injury). Motion to compel granted. The risk that the party opposing arbitration would "be saddled without prohibitive costs" must not be speculative. A party resisting arbitration must provide "some individualized evidence that they likely will face prohibitive costs in the arbitration at issue and that they are financially incapable of meeting those costs." Defendant did not waive arbitration, as its "actions amount[ed] to nothing more than responses to its litigation obligations."

Guerrero v. Physicians Unity P A, No. 6:25-CV-00741, 2026 WL 1543661 (W.D. La. May 12, 2026) (Ayo, Mag. J.), report and recommendation adopted, 2026 WL 1542204 (June 1, 2026) (employment). Moton to compel granted. Whether "good faith mediation is laid out as a prerequisite to arbitration in the ADR Agreement, and [defendant] failed to mediate in good faith" is a question for the arbitrator to decide.

Smith v. Acima Leasing, LLC, No. 4:26-CV-00055-ALM-BD, 2026 WL 1473731 (E.D. Tex. May 1, 2026) (Davis, Mag. J.), report and recommendation adopted, 2026 WL 1473668 (May 26, 2026) (Fair Credit Reporting Act). Motion to compel granted. Court could not decide whether defendant "sold it rights under the contract and, with them, its right to enforce the arbitration agreement" because the arbitration agreement delegated questions about "whether to set it aside, its 'validity and scope' and 'whether to arbitrate' to the arbitrator."

Chemcraft (Pty) Ltd. v. McAlpine, No. 4:25-CV-00766-O, 2026 WL 1365030 (N.D. Tex. May 15, 2026) (brokerage/banking). Motion to compel granted. Prior ruling by state intermediate appellate court regarding application of direct-benefits estoppel "must be given full faith and credit." Because that court's ruling was procedurally definite, plaintiff was collaterally estopped from relitigating the issue. Direct-benefits estoppel applies "when the nonsignatory either (1) knowingly seeks and obtains direct benefits from the contract or (2) seeks to enforce the terms of the contract or asserts claims that must be determined by reference to that contract."

Phillips v. Equifax Info. Services, LLC, No. 4:25-CV-04227, 2026 WL 1224126 (S.D. Tex. May 5, 2026) (Palermo, Mag. J.) (Fair Credit Reporting Act). Motion to compel granted. Where it is undisputed that there is a written arbitration agreement and neither party contests the agreement's validity, "the parties are deemed to be parties to a valid arbitration agreement." Under the FAA, written arbitration agreements are "prima facie valid and must be enforced," unless the party opposing arbitration "alleges and proves that the arbitration clause itself was a product of fraud, coercion or such grounds as exist at law or in equity for the revocation of the contract."

Burge v. United Services Auto. Ass'n, No. 5:26-CV-00921-MA, 2026 WL 1413561 (W.D. Tex. May 19, 2026) (employment). Motion to compel granted. The fact that plaintiff was on military duty out-of-state when he electronically executed the parties' agreement did not create an "irreconcilable timing and location conflict that undermines authenticity and formation." The Fifth Circuit and the Texas Supreme Court "have made clear that an employer may condition new or continued at-will employment on acceptance of a binding, 'take-it-or-leave-it' arbitration agreement." The purposes of the Uniformed Services Employment and Reemployment Rights Act of 194 "can be fully realized through arbitration." Intertwined claims estoppel was applied to plaintiff's claims against the nonsignatory severance plan.