

Arbitration in the Fifth – November 2022

December 7, 2022 Odean Volker

PRACTICES International Arbitration, Litigation

During November 2022, the Fifth Circuit Court of Appeals undertook a lengthy analysis of aspects of the Texas Arbitration Act in In the Matter of Amberson. In Llagas v. Sealift Holdings Inc., the Eastern District of Louisiana considered what it described as a case of first impression involving enforcement of a foreign award on a foreign seaman's U.S. statutory claims arising under the seaman's foreign contract.

Opinion of the Fifth Circuit

In the Matter of Amberson, No. 21-50960, 2022 WL 17076708, at *21 (5th Cir. Nov. 18, 2022) (legal services). Texas law includes the Federal Arbitration Act (FAA) due to Texas courts' incorporating the FAA into Texas substantive law. Texas courts do not read choice-of-law provisions as exclusive of the FAA unless a provision "specifically exclude[s] the application of federal law." A court may accept the parties' agreement on the applicable law. The vacatur provision of the Texas Arbitration Act that addresses arbitrators exceeding their powers was applied to the objection that the scope of the parties' agreement did not reach a particular claim. A pre-arbitration mandamus in state court was not the sole vehicle by which to challenge the existence and scope of the parties' arbitration agreement.

Opinions of United States District Courts

Motions to Compel Arbitration

City of Kenner v. Certain Underwriters at Lloyd's of London, No. CV 22-2167, 2022 WL 16961130 (E.D. La. Nov. 16, 2022) (insurance). Motion to compel granted. While Louisiana law ordinarily prohibits enforcement of arbitration clauses covering insurance disputes, the Convention of the Recognition and Enforcement of Foreign Arbitral Awards and its enabling act 9 U.S.C. §§ 201, et seq. "supersede otherwise applicable state law." Under the Convention and the enabling act, courts "[s]hould compel arbitration if (1) there is an agreement in writing to arbitrate the dispute, (2) the agreement provides for arbitration in the territory of a Convention signatory, (3) the agreement arises out of a commercial legal relationship, and (4) a party to the agreement is not an American citizen." The Convention analysis did not apply to the domestic insurers as each individual policy that comprised the "account policy" was its own contract. However, plaintiff's claims did not differentiate among insurers but alleged interdependent and concerted misconduct warranting application of equitable estoppel to compel all insurers to arbitration.

EPL Oil & Gas, LLC v. Trimont Energy (Now), LLC, No. 6:22-CV-208-JDK, 2022 WL 16837054 (E.D. Tex. Nov. 9, 2022) (maritime). Motion to compel granted. Subject matter jurisdiction existed under the Outer Continental Shelf Lands Act. Adoption of the American Arbitration Association rules was as clear and unmistakable evidence that the parties agreed to arbitrate arbitrability. Provision allowing a party to seek injunctive relief in court did not carve out injunctive relief. The provision "merely permits parties to apply to a court for temporary injunctive relief to maintain the status quo pending arbitration, but not to request permanent injunctive relief that would require a court to consider and decide the merits of an arbitrable claim."

Motions to Confirm/Vacate Award

Conti 11. Container Schiffarts-GMBH & Co. v. MSC Mediterranean Shipping Co. S.A., No. CV 22-1114, 2022 WL 17177480 (E.D. La. Nov. 23, 2022) (maritime). Award confirmed. Objection that asserted that confirmation may be refused on grounds identified in Article V of the New York Convention without naming a specific defense or factual support is not adequate to assert a defense.

Llagas v. Sealift Holdings Inc., No. 2:17-CV-00472, 2022 WL 16821811 (W.D. La. Nov. 8, 2022) (maritime injury). Award enforced. “[T]he specific question in this case—whether enforcement of a foreign arbitral award violates public policy when a Filipino seaman’s statutory claims arise from a [Philippine Overseas Employment Administration] contract that is carried out aboard a U.S. flagged vessel—is one of first impression . . .” There is no implied presumption against arbitration of certain claims, parties may agree to limit the issues subject to arbitration. The intent of the parties as evidenced by the language of the contract will control. Under the effective vindication doctrine, foreign tribunals have the authority to arbitrate claims under U.S. law but the authority to enforce any award always rests in a U.S. district court to ensure the legitimate interests of U.S. statutes have been addressed. Courts need only inquire if the foreign tribunal took cognizance of the statutory claims and actually decided them.

Other Arbitration-Related Issues

Communications Workers of Am., AFL-CIO v. ADT Sec. Services, Inc., No. CV 22-1310, 2022 WL 16961126 (E.D. La. Nov. 16, 2022) (labor). The presumption in favor of arbitration should be applied only when the court concludes “that arbitration of a particular dispute is what the parties intended because their express agreement to arbitrate was validly formed, is legally enforceable, and is best construed to encompass the dispute.” Accordingly, “the presumption that a grievance is arbitrable may be rebutted ‘if the party resisting arbitration shows either (1) the existence of an express provision excluding the grievance from arbitration or (2) the ‘most forceful evidence’ of a purpose to exclude the claim from arbitration.’”