# Arbitration in the Fifth - November 2024

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PRACTICES Litigation, International Arbitration

November 2024 was a slow but interesting month for arbitration-related opinions. In the Western District of Louisiana, *One Lakeside Plaza LLC v. Indian Harbor Ins. Co.* countered the trend of seemingly similar cases with its refusal to compel arbitration of an insurance dispute. In the Northern District of Texas, *Bequest Funds, LLC v. Magnolia Financial Grp., LLC* provided guidance on preserving an objection to personal jurisdiction while litigating a motion to compel arbitration.

## Opinions of United States District Courts

### Motions to Compel Arbitration

*Wightman v. UnitedHealth Group Inc.*, No. CV 24-1748, 2024 WL 4765640 (E.D. La. Nov. 13, 2024) (health insurance preferred provide agreement). Motion to compel granted. Incorporation on American Arbitration Rules "presents clear and unmistakable evidence that the parties agreed to arbitrate arbitrability." The delegation of arbitrability also applied to non-signatories. The argument that movant missed a contractual deadline to seek arbitration, was arbitrable. "Procedural questions of arbitrability, 'such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate ... are for the arbitrators to decide.'"

*One Lakeside Plaza LLC v. Indian Harbor Ins. Co.*, No. 2:21-CV-04050, 2024 WL 4828732 (W.D. La. Nov. 19, 2024) (insurance). Motion to compel denied. The court held that "[t]here are no foreign insurers who could be held liable, only domestic insurers in this matter" and that "the contractual agreements with the domestic insurers are expressly declared to be separate contracts." Therefore, the court held that New York Convention did not apply. Further, "a domestic insurer may not use estoppel under Louisiana law to enforce arbitration via a foreign insurer's policy."

*Daniels v. Seahorse Underwriters*, No. 1:24CV214-LG-RPM, 2024 WL 4873314 (S.D. Miss. Nov. 22, 2024) (insurance). Motion to compel granted. Insured "accepted the terms of the policy through his payment of premiums and is bound regardless of whether he knew about the arbitration provision." Under Mississippi law, equitable estoppel prevented the insured from asserting entitlement to the benefits of the insurance policy without the "burden of the policy's arbitration provision." The insurance policy was held to be neither procedurally or substantively unconscionable

*Gillon v. UCB INC.*, No. 4:24-CV-01418, 2024 WL 4829503 (S.D. Tex. Nov. 19, 2024) (employment). Motion to compel granted. "Every circuit except the Fifth Circuit has endorsed the use of the Federal Rule of Civil Procedure 56 summary judgment standard to evaluate motions to compel arbitration under the [Federal Arbitration Act]. While the Fifth Circuit has not articulated the appropriate standard to apply to a motion to compel arbitration, the district courts within it have used the Rule 56 standard." The failure of the employer to sign the arbitration agreement did not mean it was not bound by the agreement. The Georgia statute requiring that the arbitration agreement be "initialed by all signatories" governed enforceability and not validity. The Georgi Arbitration Code requirement that all parties must sign an arbitration agreement was "hostile to arbitration" and was preempted by the Federal Arbitration Act. The arbitration agreement was not

illusory because the employer "may only modify [the agreement] with proper notice" and agreement of the employee.

**Motions to Vacate or Confirm**

*Kingman Holdings, LLC v. Blackboard Ins. Co.*, No. CV 23-4525, 2024 WL 4765479 (E.D. La. Nov. 13, 2024) (construction). Motion to vacate denied. The Fifth Circuit has not "embraced the characterization" of manifest disregard as an objection based on §10(a)(4) of the Federal Arbitration Act or "a judicial gloss on same." "Plaintiff cannot vacate the arbitration award based on "manifest disregard," even when clothed with § 10(a)(4)." "An arbitrator does not exceed his power under § 10(a)(4) unless he has utterly contorted the essence of the contract."

**Other arbitration related opinions**

*Bequest Funds, LLC v. Magnolia Financial Grp., LLC*, No. 3:23-CV-0866-B, 2024 WL 4876958 (N.D. Tex. Nov. 22, 2024) (loan agreement). Motion to dismiss for lack of personal jurisdiction denied. "A defendant waives the right to challenge personal jurisdiction by making a general appearance before the Court and engaging in an 'affirmative act that impliedly recognizes the court's jurisdiction over the parties' to hear the matter . . . a motion to compel arbitration can qualify as such an affirmative act . . . [defendants] actively litigated a motion to compel arbitration without raising a personal jurisdiction defense for five months . . . This was an affirmative act that waived a personal jurisdiction defense." The court distinguished the present case from Fifth Circuit's holding *Halliburton Energy Services, Inc. v. Ironshore Specialty Insurance Co.* explaining that in *Halliburton* "the defendants filed a single motion to dismiss that included not only a request to compel arbitration, but also a defense for lack of personal jurisdiction." Here, the motion to compel was filed in June 2023 and the personal jurisdiction defense raised in November 2023.