Arbitration in the Fifth – November 2025

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PRACTICES Litigation, International Arbitration

November 2025 was another slow month for arbitration related opinions in the Fifth Circuit. The highlight of the month is the Eastern District of Texas' review of the Federal Arbitration Act's residual transportation worker exemption in *George v. Amazon.com Services LLC.*

Opinion of the Fifth Circuit

Stanford by & through Phillips v. Brandon Nursing & Rehab. Ctr., L.L.C., No. 24-60509, 2025 WL 3237635 (5th Cir. Nov. 20, 2025). Question certified to the Supreme Court of Mississippi. Plaintiff, a nursing home resident, filed the underlying negligence and medical malpractice claim through his conservator. Defendant sought to compel arbitration based on an arbitration agreement that was part of the plaintiff's admittance paperwork. The agreement was signed by plaintiff's brother acting as his health surrogate. Plaintiff argued that the arbitration agreement was invalid because the brother was not authorized to sign for plaintiff. Mississippi's Uniform Health-Care Decisions Act governs when and how healthcare surrogates can make decisions on behalf of incapacitated adults. "The validity of the arbitration agreement turns on whether [plaintiff's brother] was permitted to serve as surrogate even though [plaintiff] had a reasonably available adult son with higher priority under the statute." The Fifth Circuit certified to the Supreme Court of Mississippi a question regarding interpretation of the Act.

Opinions of United States District Courts

Motions to Compel Arbitration

Williams v. Transunion LLC, No. 3:25-CV-00172-MPM-JMV, 2025 WL 3068536 (N.D. Miss. Nov. 3, 2025) (Fair Credit Reporting Act). Motion to compel granted. A party's signature, electronic or otherwise, on an arbitration agreement, combined with clear language waiving of trial rights, constitutes valid assent to arbitration. Defendant did not waive its right to seek arbitration by engaging in settlement discussions. Attempts to settle a claim "are not inconsistent with an inclination to arbitrate and do not preclude the exercise of a right to arbitration."

George v. Amazon.com Services LLC, No. CV 4:24-CV-1063-SDJ, 2025 WL 3143598 (E.D. Tex. Nov. 10, 2025) (workplace injury). Motion to compel granted. Plaintiff was a "warehouse associate" at defendant's facility. He argued that he could not be compelled to arbitration as he claimed to be covered by the Federal Arbitration Act, section 1's residual exemption from arbitration for "any other class of workers engaged in foreign or interstate commerce." To decide whether a worker falls within Section 1's residual category, courts undertake a two-step inquiry. "First, the Court must identify the relevant 'class of workers' to which [plaintiff] belongs . . . Second, it must determine 'whether that class of workers is engaged in foreign or interstate commerce.'" The Section 1 exclusion provision is "afforded a narrow construction." Section 1's residual provision is restricted to a "transportation worker who performs work analogous to that of seamen and railroad employees, whose occupations are centered on the transport of goods in interstate or foreign commerce." The shipments from the defendant's facility were delivered only in Texas. Nearly 99% of shipments received by the facility originated in Texas. "[A] class of workers who only incidentally or

occasionally perform work involving items traveling in interstate commerce, like [plaintiff] and the other warehouse associates at [defendant's facility], does not qualify for Section 1's exemption."

Doggins v. Ruiz Food Products, Inc., No. 4:25-CV-327, 2025 WL 3268758 (E.D. Tex. Nov. 24, 2025) (employment). Motion to compel granted. Under Texas law, an arbitration agreement that is "illusory" is rejected. An agreement is illusory if one party can "avoid its promise to arbitrate by amending the provision or terminating it altogether." "Because Defendant does not expressly retain any right within the Agreement to modify or abolish it, and because the Agreement further 'survives termination of the employment relationship,' it is not illusory under Texas law." A party may be bound by an agreement to arbitrate even in the absence of the party's signature. Here, plaintiff's "argument regarding the Agreement's formation is limited solely to the issue of physical signature, Plaintiff has failed to raise a fact question precluding the enforcement of the Agreement."

Menifee v. T-Mobile PV/SS PCS LLC, No. 4:24-CV-04262, 2025 WL 3101799 (S.D. Tex. Nov. 6, 2025 (mobile phone service). Motion to compel granted. "The Fifth Circuit has established a two-step inquiry in determining whether the parties have agreed to arbitrate a claim. The first is contract formation—whether the parties entered into any arbitration agreement at all. The second involves contract interpretation to determine whether this claim is covered by the arbitration agreement. Ordinarily, both steps are questions for the Court. However, where the parties' contract delegates the question of arbitrability to the arbitrator, a court possesses no authority to decide whether the parties' dispute falls within the scope of the agreement. Although there is a strong presumption favoring arbitration, the presumption arises only after the party seeking to compel arbitration proves that a valid arbitration agreement exists." (internal citations and quotations omitted)

Castillo v. CVS Pharmacy, Inc., No. 7:25-CV-00252, 2025 WL 3240438 (S.D. Tex. Nov. 20, 2025) (employment). Motion to compel granted. Once a movant presents "competent evidence showing the formation of an agreement to arbitrate," the respondent must "produce some contrary evidence to put the matter in issue." To satisfy the "some-evidence" standard, plaintiff must (1) unequivocally deny that he agreed to arbitrate and (2) produce some evidence to support this assertion.

Ashby v. Whataburger LLC, No. 1:25-CV-00798-ADA-DH, 2025 WL 3212050 (W.D. Tex. Oct. 8, 2025) (Howell, Mag. J.), report and recommendation adopted, 2025 WL 3211238 (Nov. 17, 2025) (employment). Motion to compel granted. Under Texas law, "unconscionability includes two aspects: (1) procedural unconscionability, which refers to the circumstances surrounding the adoption of the arbitration provision, and (2) substantive unconscionability, which refers to the fairness of the arbitration provision itself." Assertions that a party is "unsophisticated," did not "voluntarily" waive his or her rights, and would not have signed an arbitration agreement "if the concept of arbitration had been explained to" him or her "fail to establish procedural unconscionability."