Arbitration in the Fifth - October 2026

By Odean L. Volker | November 16, 2026

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In October 2026, the Western District of Texas considered whether to enforce an interim award for injunctive relief in *I.C. Deposits Inv., Inc. v. Valdespino*. In *Davis v. Secure Parcel Delivery Serv., LLC,* the Southern District of Texas rejected a delivery driver's claim to exemption from the Federal Arbitration Act. Meanwhile, multiple courts considered agreements and terms presented in electronic form.

Opinions of United States District Courts

Motions to Compel Arbitration

Park Capital ACQ LLC v. Choice Hotels Int'l Inc., No. 2:26-CV-02385, 2026 WL 2983565 (W.D. La. Oct. 5, 2026) (franchise). Motion to compel granted. An employee is usually covered by an arbitration agreement signed by his or her employer. Otherwise, a plaintiff could "circumvent arbitration agreements merely by naming the employee as an individual defendant instead of the employer itself, which would in turn thwart the strong federal policy in favor of arbitration." Federal Arbitration Act section 3's alternative to request a stay of the district court action does not extend "a right to stay proceedings to the party opposing arbitration. The court held: "Plaintiffs have brought this suit for the purpose of opposing ongoing arbitration proceedings, and the court has determined that all of their claims must be decided under those proceedings. Accordingly, there is no basis to maintain the case on the court's docket."

Chasing Aces Golf, Inc. v. QCaddy Int'l B.V., No. CV 26-2627, 2026 WL 3136225 (W.D. La. Oct. 20, 2026) (automation). Motion to compel granted. When the parties agree to arbitrate arbitrability, "a party seeking to avoid arbitration must directly challenge the arbitration or delegation clause, not just the contract as a whole." Adoption of the American Arbitration Association rules "presents clear and unmistakable evidence" that the parties agreed to arbitrate arbitrability. A requirement to arbitrate in a foreign forum does not make a clause unconscionable even though it may impose a financial and logistical burden on a party. When considering whether to compel arbitration, the court's inquiry is "confined to determining the applicability of the [New York] Convention to the arbitration clause at issue." Courts have "no authority" to "mandate the law to be applied in the future arbitration proceeding."

Thomas v. Sweepsteaks Ltd., No. 1:25-CV-00136-GHD-DAS, 2026 WL 3121900 (N.D. Miss. Sept. 28, 2026) (casino-oriented internet gaming). Motion to compel granted. The arbitration agreement was contained in defendant's terms and conditions presented on its website in a "scrollwrap format." This required a user to "scroll through the entire [terms and conditions] before clicking a checkbox stating, 'I have read and agree to the terms and conditions.'" Whether an arbitration agreement that contains a delegation clause is illusory is a matter for the arbitrator to decide. Plaintiff's argument that arbitration agreement was unenforceable because the "purpose of the subject website is allegedly illegal gambling" was an enforceability and validity challenge delegated to the arbitrator.

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Lewis v. Epic Games, Inc., No. 1:26CV217-HSO-BWR, 2026 WL 3266838 (S.D. Miss. Oct. 29, 2026) (product liability). Motion to compel granted. Under California law, "[o]n the internet, a manifestation of assent may [for contract formation] be inferred from the consumer's actions on the website — including, for example, checking boxes and clicking buttons." "Courts enforce agreements to arbitrate when individuals are presented with terms and conditions and are required to click 'I Agree' to manifest assent to those terms."

Plummer v. Consumer Portfolio Servs., Inc., No. 4:26-CV-06699, 2026 WL 3075983 (S.D. Tex. Oct. 14, 2026) (purchase of automobile). Motion to compel granted. Plaintiff argued that the arbitration agreement was "unenforceable because the contract documents were displayed on a computer monitor while they were asked to sign each page on an electronic signature pad." The court determined that "Plaintiffs individually signed each page of the contract — whether this signature was on an electronic pad or with a pen on paper, the Arbitration Provision is enforceable under Texas law."

Davis v. Secure Parcel Delivery Serv., LLC, No. 4:26-CV-2154, 2026 WL 3169310 (S.D. Tex. Oct. 21, 2026) (employment). Motion to compel granted. Plaintiff worked as a delivery truck driver making deliveries of goods from a Houston-area warehouse to Houston-area customers. She was not an exempt transportation worker under section 1 of the Federal Arbitration Act because "by the time she interacted with the goods, the goods were no longer involved in interstate commerce."

Tyer v. Peachtree Hotel Group II, LLC, No. 1:26-CV-00744-ADA-DH, 2026 WL 3153106 (W.D. Tex. Oct. 20, 2026) (Dowell, Mag. J.) (employment). Motion to compel granted. Where an agreement contains a delegation clause, any questions as to its enforceability should be decided by an arbitrator. Plaintiff's arguments about pre-suit repudiation and enforceability were for the arbitrator to decide.

Motion to Confirm or Vacate Awards

Booker-Luton v. Amgen Inc., No. 3:26-CV-2156-D, 2026 WL 3136217 (N.D. Tex. Oct. 20, 2026). Motion to vacate denied. Email request to confer regarding a motion to vacate an award did not satisfy the requirement in 9 U.S.C. 12 that a notice of motion to vacate be served within three months of receipt of an award. Further, filing a petition to vacate within the prescribed period without more is insufficient; the petitioner must serve notice of the petition to vacate before the deadline. Equitable tolling does not apply to extend the deadline.

I.C. Deposits Inv., Inc. v. Valdespino, No. 5:26-CV-03178-FB-RBF, 2026 WL 3225072 (W.D. Tex. Oct. 7, 2026) (Farrer, Mag. J.), report and recommendation adopted, 2026 WL 3222228 (Oct. 27, 2026). Interim award confirmed. The arbitrator entered an interim award described as a "final and definite determination of the discrete application for emergency relief." The award further stated that the award was "intended to constitute an arbitral award of emergency relief capable of judicial recognition, confirmation, and enforcement to the fullest extent permitted by applicable law." The interim award for final injunctive relief was confirmed subject to modification of the deadline for compliance, which had passed by the time of the court's ruling.

Other Arbitration-Related Opinions

In re: TM36, LLC, No. 26-90386, 2026 WL 3023430 (Bankr. S.D. Tex. Oct. 7, 2026) (bankruptcy). Motion to compel denied. When an arbitration clause is part of an underlying contract, that underlying agreement provides the consideration. A party substantially invoking the judicial process is one way of demonstrating that it waived its right to arbitrate. A party's dismissal of arbitration

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claims, “did not necessarily demonstrate that [it] acted inconsistently with its right to arbitrate.” A creditor’s conduct in a bankruptcy proceeding, including filing a proof of claim, was not inconsistent with its right to arbitrate. However, “a bankruptcy court may decline to enforce an arbitration provision where (1) the underlying nature of the proceeding derives exclusively from the provisions of the Bankruptcy Code — not the debtor's prepetition legal or equitable rights, and (2) the enforcement of the arbitration provision would conflict with the purposes/goals of the Bankruptcy Code.”

Esaadi v. Pilot Catastrophe Servs, Inc., No. 3:26-CV-2167-X-BN, 2026 WL 3182507 (N.D. Tex. Oct. 22, 2026) (Horan, Mag. J.). A court may intervene to select an arbitrator upon application of a party “in three instances: (1) if the arbitration agreement does not provide a method for selecting arbitrators; (2) if the arbitration agreement provides a method for selecting arbitrators but any party to the agreement has failed to follow that method; or (3) if there is a lapse in the naming of an arbitrator or arbitrators.” Request to intervene based on “undue financial burden” was denied.

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