

## Arbitration in the Fifth – September 2025

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**PRACTICES** Litigation, International Arbitration

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In September 2025, the Fifth Circuit Court of Appeals' *Ford v. ConocoPhillips* considered the availability of arbitration in a contracted employee arrangement. In the Eastern District of Texas, *Bishop v. SZ DJI Tech. Co., Ltd.* demonstrated the challenge clickwrap agreements face when a minor downloads an app.

### Opinion of the Fifth Circuit Court of Appeals

*Ford v. ConocoPhillips*, No. 22-20334, 2025 WL 2602544 (5th Cir. Sept. 9, 2025). Order denying arbitration vacated and remanded. "A consulting firm contracted to provide personnel to ConocoPhillips. The consulting firm hired Shawn Michael Ford and contracted him out to ConocoPhillips." Because the individual's agreement with the consulting firm incorporated by reference the consulting firm's agreement with its customer and the agreement with the customer included an obligation to arbitrate; the individual was district court's order denying arbitration was vacated.

### Opinions of United States District Courts

#### Motions to Compel Arbitration

*Riverside Acad., Inc. v. Certain Underwriters at Lloyd's London*, No. CV 22-4395, 2025 WL 2625561 (E.D. La. Aug. 20, 2025) (insurance). Motion to reopen previously stayed matter granted. Reliance on equitable estoppel is not available to domestic insurers seeking to compel arbitration "because it is in direct conflict with L.A. R.S. 22:868(A)(2)." Louisiana law "prevents domestic insurers from using equitable estoppel to invoke the compulsion of arbitration via the [New York] Convention."

*Saleh v. Planters Bank & Tr. Co. Indianola, Miss.*, No. CV 25-466, 2025 WL 2689210 (E.D. La. Sept. 19, 2025) (mortgage foreclosure). Motion to compel granted. The parties' agreement provided that any "dispute regarding whether a particular controversy is subject to arbitration...shall be decided by the arbitrator(s)." Where the parties have included a delegation clause, "the court simply analyzes whether there is a valid agreement, and if so, whether there is 'clear and unmistakable evidence' that the parties intended to arbitrate the arbitrability issue."

*Ortiguerra v. Grand Isle Shipyard, LLC*, No. CV 22-309, 2025 WL 2689199 (E.D. La. Sept. 19, 2025) ((Fair Labor Standards Act ("FLSA") Trafficking Victims Protection Act ("TVPA") and Fair Housing Act ("FHA")). Motion for reconsideration denied. The court previously denied arbitration as to the TVPA and FHA claims. Defendant sought reconsideration alleging that the TVPA and FHA arose from plaintiffs' employment and therefore the arbitration clause in the employment contracts should apply. The court relied on the Eleventh Circuit's formulation that to: "determine whether a dispute *arises out of* a contract ... the focus is on 'whether the tort or breach in question was an immediate, foreseeable result of the performance of *contractual duties*.'" The court found that 1)"[d]efendants' "alleged violations of the TVPA and FHA occurred while plaintiffs had no work duties" and 2) "[t]hese violations were not an immediate, foreseeable result of Plaintiffs'

performance under their employment contract.” The claims were therefore found to not arise from the employment contract.

*Ewing v. Toyota Motor Mfg. Mississippi, Inc.*, No. 1:24-CV-185-SA-RP, 2025 WL 2810012 (N.D. Miss. Sept. 30, 2025) (employment). Motion to compel granted. The employer alleged that it issued an arbitration agreement to its employees and continuing employment constituted acceptance. However, the court found that the employer did not meet “its burden is [sic] establishing that [employee] assented to the Arbitration Agreement absent sufficient proof that the agreement was actually mailed to her.” Employer’s evidence related to the process for giving notice but did not “state under oath that they mailed the agreement to [employee].”

*Daye v. United Auto Credit Corp.*, No. 5:24-CV-100-DCB-LGI, 2025 WL 2735606 (S.D. Miss. Sept. 25, 2025) (automobile purchase). Motion to compel granted. In a delegation clause case, courts follow a limited two-step analysis in ruling on the motion to compel: “first, whether the parties entered into a valid agreement to arbitrate some set of claims; and second, whether that agreement actually does contain a delegation clause that requires that this claim go to arbitration for gateway rulings on threshold arbitrability issues.”

*Bishop v. SZ DJI Tech. Co., Ltd.*, No. 4:24-CV-268-SDJ, 2025 WL 2784243 (E.D. Tex. Sept. 30, 2025) (personal injury). Motion to compel denied. Plaintiffs purchased “quadcopter camera drone.” Only the minor son downloaded the app for the drone. The app included a clickwrap agreement with an arbitration clause. Under Texas law, a minor’s contract is voidable during minority and for a reasonable time after the minor reaches majority. The minor “validly disaffirmed any previously enforceable arbitration agreement.” Further, “under Texas law a contract that has been invalidated by a minor’s disaffirmance cannot bind non-signatories through direct-benefits estoppel because no valid agreement to arbitrate exists.”

*Day v. McGaffey*, No. 3:24-CV-02820-X, 2025 WL 2773912 (N.D. Tex. Sept. 29, 2025) (automobile purchase). Motion to compel granted. A section of the arbitration provision which required plaintiff to reimburse defendant for all legal fees and expenses associated with arbitration did not render the arbitration provision unconscionable. Another section provided that the arbitrator “shall have the authority to award fees, costs, injunctive or equitable relief in accordance with the agreement and applicable law.” The provision was not so one-sided as to render the agreement unconscionable. “Arbitration provisions do not require ‘mutuality of obligation’.”

*Lopez v. Meraki Solar, LLC*, No. 7:25-CV-00067, 2025 WL 2774121 (S.D. Tex. Sept. 26, 2025) (financing for solar panels). Motion to compel denied without prejudice and limited discovery allowed. The alleged contract was signed electronically, but plaintiffs testified that they had never seen the document and did not sign it. When a “defendant swears that the plaintiff ‘electronically acknowledged an arbitration agreement and has a business record to support its version of the facts,’ but the plaintiff testifies under oath that ‘he never saw, acknowledged, or signed any arbitration agreement’ a ‘fact issue exists, and the evidence proffered by each party goes to the weight and credibility of that party’s version of the facts’.” Arguments to bind plaintiffs as non-signatories were also rejected. Plaintiff testified they were never shown the loan agreement and were not seeking to enforce certain terms of the loan agreement.

## **Motions to Confirm/Vacate an Award**

*Bautista v. PriceWaterhouseCoopers LLP*, No. 3:24-CV-2593-D, 2025 WL 2773813 (N.D. Tex. Sept. 29, 2025). Motion to vacate denied and motion to confirm granted. Following a progression of orders, amendments and a status conference and show cause hearing with the arbitrator, the

award dismissed claimant's claims for want of prosecution. The arbitrator, having concluded "he lacked authority and jurisdiction to join other claimants and that [the individual claimant] had repeatedly refused to comply with orders, dismissed [claimant's] claims for want of prosecution. Claimant alleged multiple bases for vacating the award, none of which factually satisfied the relevant standards.