

Arbitration in the Fifth – September 2026

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In September 2026, the Fifth Circuit Court of Appeals continued the recognition of a split between domestic and foreign insurers' right to arbitration in *Transp. Consultants, Inc. v. Certain Underwriters at Lloyd's*. Meanwhile, the Western District of Louisiana and the Southern District of Texas considered the timeliness of efforts to modify or vacate awards.

Opinions of the Fifth Circuit Court of Appeals

Jennings v. Vandergriff Honda, No. 25-11034, 2026 WL 2594312 (5th Cir. Sept. 2, 2026) (per curiam). Order dismissing for lack of subject matter jurisdiction affirmed. Order taxing costs reversed. On claimant's petition to vacate the award, the underlying dispute, alleging federal law claims, was not at issue. The application to vacate the award "concerns the contractual rights provided in the arbitration agreement, generally governed by state law. And adjudication of such state-law contractual rights." Under Fed. R. Civ. P. 54(d)(1), costs may be "allowed to the prevailing party." "But where, as here, a case is dismissed for lack of jurisdiction, there is no such 'prevailing party.'"

Transp. Consultants, Inc. v. Certain Underwriters at Lloyd's, No. 25-30372, 2026 WL 2602325 (5th Cir. Sept. 3, 2026). Order denying motion to compel arbitration as to domestic insurers affirmed. Remanded to determine if the litigation with domestic insurers should be stayed. Based on the policy's endorsement that it is construed as a "separate contract between the insured and each of the underwriters," the policy contained separate agreements. Therefore, the agreements with the domestic insurers did not fall under the New York Convention. Under Louisiana law, equitable estoppel could not be used to compel arbitration. Section 3 of the Federal Arbitration Act, allowing for a stay, applies to nonsignatories "where (1) the arbitrated and litigated disputes involve the same operative facts; (2) the claims asserted in the arbitration and litigation are 'inherently inseparable'; and (3) the litigation has a 'critical impact' on the arbitration." The case was remanded for district court to reconsider whether a stay of litigation against the domestic insurers is appropriate.

Opinions of United States District Courts

Motions to Compel Arbitration

Borden v. Hugo Boss Retail, Inc., No. 4:25-CV-00949-SDJ-AGD, 2026 WL 2754153 (E.D. Tex. Aug. 25, 2026), report and recommendation adopted, 2026 WL 2749414 (Sept. 16, 2026) (employment). Motion to compel granted. "The validity of electronic contracts is widely recognized in Texas. This includes contracts signed through the DocuSign platform." Under Texas law, a "principal's arbitration agreement would cover [a suit against the principal's] [] employees so long as the suit's substance covered actions within the course and scope of [the employees'] employment."

Knighten-Hadley v. Walmart, Inc., No. CV 26-454, 2026 WL 2920315 (E.D. La. Sept. 29, 2026) (personal injury). Motion to compel granted. The form of notice and consent, known as a "clickwrap agreement," suffices to bind individuals to the displayed terms and conditions under Louisiana law.

Louisiana law provides that electronic signatures have the same legal effect as pen-and-paper signatures.

D.R. Horton, Inc. - Gulf Coast v. Caulfield, No. CV 26-82, 2026 WL 2936329 (E.D. La. Sept. 30, 2026) (residential construction). Motion to compel granted. “Citizens of different states engaged in performance of contractual operations in one of those states are engaged in a contract involving commerce under the FAA.” “Residential construction is the type of activity, in the aggregate, that impacts substantially on interstate commerce as it utilizes building materials, fixtures, appliances, labor, and insurance that all cross state lines.” The “express adoption” of the AAA’s Construction Industry Arbitration Rules “presents clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.”

Kent v. Turner Indus., No. CV 25-621-BAJ-EWD, 2026 WL 2727774 (M.D. La. Aug. 27, 2026) (Wilder-Doomes, Mag. J.), report and recommendation adopted, 2026 WL 2727483 (Sept. 15, 2026) (employment). Motion to compel granted. Under Louisiana law, “[a] contracting party may stipulate a benefit for a third party,” a stipulation “*pour autrui*.” Nonsignatories were third-party beneficiaries of the arbitration agreement.

CAHRMC v. QuadraMed Affinity Corp., No. 4:25-CV-04462, 2026 WL 2690990 (S.D. Tex. Aug. 26, 2026) (Ho, Mag. J.), report and recommendation adopted, 2026 WL 2690982 (Sept. 11, 2026) (data breach). The parties’ arbitration agreement applied to a “dispute arising from or related to the subject matter of the Hosting Agreement.” “When a contract contemplates the type of dispute that later arises, that dispute falls within the scope of the arbitration agreement too.” As to nonsignatories motion to compel, “Texas has ‘rejected’ the concerted misconduct estoppel theory.”

Motions to Confirm or Vacate Awards

Picard Grp., LLC v. Intensive Specialty Hosp., LLC, No. CV 26-0912, 2026 WL 2908282 (W.D. La. Sept. 28, 2026). Award confirmed. A motion to modify must be “served upon the adverse party or his attorney within three months after the award is filed or delivered.” If a party fails to timely serve a motion to modify, it “forfeits the right to seek judicial review of the award.” To modify an award for miscalculation of figures, the error must concern “a computational error in determining the total amount of an award ... [that is] a mathematical error appearing on the face of the award.” The arbitrator must have committed “an unambiguous and undisputed mistake of fact...in making his award.”

Gaddie v. Experian Info. Sols., Inc., No. CV H-26-3072, 2026 WL 2622517 (S.D. Tex. Sept. 4, 2026). Motion to vacate denied. “Because of the strong national policy in favor of arbitration, ‘judicial review of an arbitration award is extraordinarily narrow’ and ‘exceedingly deferential.’” The burden of proof is on the party seeking to vacate the arbitration award. Manifest disregard for the law is not a ground for vacatur of an arbitration award.

NRCO Eng'g, S.A. v. Linden Energy, LLC, No. CV H-26-3617, 2026 WL 2922204 (S.D. Tex. Sept. 28, 2026). Award confirmed. “To obtain confirmation of an award under the [New York] Convention, the party applying for confirmation must supply the court with its arbitration award and original agreement between the parties, or certified copies thereof . . . Absent grounds to vacate, modify, or correct the award, the court must confirm the arbitration award . . . Grounds for opposing enforcement of the arbitration award must be served ‘within three months after the arbitration award is filed or delivered.’”

Other Arbitration-Related Opinions

Louisiana Cmty. Dev. Capital Fund, Inc. v. Choice Hotels Int'l, Inc., No. CV 25-985-SDD-RLB, 2026 WL 2907674 (M.D. La. Sept. 28, 2026). Motion to vacate denied. Argument that arbitrator “exceeded his authority by both failing to provide notice of the award issuance and by failing to comply with AAA Rule R-40(c) when he issued an award” did not demonstrate that the arbitration decision was irrational or otherwise exceeded the arbitrator's authority.

Lummus Tech., LLC v. Ineos US Chemicals Co., No. 4:26-CV-2082, 2026 WL 2839402 (S.D. Tex. Sept. 22, 2026) Motion to remand denied. Section 205 of the Federal Arbitration Act “creates two jurisdictional requirements: (1) there must be an arbitration agreement or award that falls under the [New York] Convention, and (2) the dispute must relate to that arbitration agreement.” The presence of a non-U.S. party is not required in cases where there is “a reasonable relation” between the parties' commercial relationship and some “important foreign element.” The court does not look “to the general relationship among the parties” but to the “foreign character,” if any, of the agreement itself. The reasonable relation “must be akin to ‘involv[ing] property located abroad’ or ‘envisag[ing] performance or enforcement abroad’ — that is, the relationship must contemplate overseas action or involvement.”