

Arbitration in the Fifth - April 2021

May 11, 2021 Odean Volker

PRACTICES International Arbitration, Litigation

While April 2021 was a slow month for arbitration-related opinions by the courts of the Fifth Circuit, April's opinions place arbitral issues in a range of contexts. Miller v. Ewing Buick-Plano, LP considers the impact of corporate conversion on signatory status and Phillips v. Weatherford US, LP explains the requirements to rebut the presumption of receipt of a mailed agreement.

Opinions of United States District Courts

Motions to Compel Arbitration

Long v. Manhattan Nursing & Rehab. Ctr., Inc., 321CV00090TSLRPM, 2021 WL 1269900 (S.D. Miss. Apr. 6, 2021) (personal injury/medical malpractice). Motion to compel granted.

Baldwin v. Beeche, 4:20-CV-639, 2021 WL 1377149 (E.D. Tex. Apr. 12, 2021) (settlement agreement). Motion to compel granted. If a party challenges a contract as a whole, an arbitration agreement may be severed and enforced independently. Fraudulent inducement allegations directed at the entire contract are for the arbitrator. Lack of diligence by a party in understanding the seat selected did not void the arbitration agreement. Agreement that arbitrator would "clarify doubts as to the scope of the agreement" was a delegation clause.

Miller v. Ewing Buick-Plano, LP, 4:20-CV-00606, 2021 WL 1550810 (E.D. Tex. Apr. 20, 2021) (FMLA). Motion to compel granted. After execution of the arbitration agreement, the defendant employer had undergone a statutory conversion from a corporation to a limited partnership. As a consequence, it was "in all regards, the same entity" as the pre-conversion signatory to the arbitration agreement.

Phillips v. Weatherford US, LP, 1:20-CV-1104-RP, 2021 WL 1647761 (W.D. Tex. Apr. 27, 2021) (employment). Motion to compel denied. Movant bears the burden of establishing the existence of an agreement to arbitrate. The presumption of receipt of a properly addressed, stamped, and mailed item is overcome conclusively only when the evidence tending to support the contrary inference is conclusive, or so clear, positive, and disinterested that it would be unreasonable not to give effect to it as conclusive. Declaration denying receipt, together with another's declaration that package was not received and evidence of an irregularity in the mailing process was sufficient to raise a genuine issue of fact as to the motion to compel.

Other Arbitration-Related Decisions

Nat'l Oilwell Varco v. Smith Int'l, Inc., 21-MC-655, 2021 WL 1380266 (S.D. Tex. Apr. 12, 2021). Motion to appoint third member of panel denied. The parties' agreement provided that in the event the party selected arbitrators could not agree on a third arbitrator, either party could "request the Senior Judge of the United States District Court of the Southern District of Texas to select the third arbitrator." The Chief Judge of the Southern District of Texas rejected the request. The ambiguous reference to "senior judge" left the "door open for either party to later challenge any arbitrator the court might choose."

Sullivan v. Feldman, CV H-20-2236, 2021 WL 1517903 (S.D. Tex. Apr. 16, 2021) (alleged legal malpractice). Motion to decide permissibility of class arbitration and discovery issue in ongoing arbitration. The parties' broad delegation clause, and the absence of any explicit provision barring class arbitration, meant that the court had no basis on which to decide the motion. Availability of class arbitration is a "gateway" arbitrability issue. If the parties agree to delegate arbitrability issues to the arbitrator, then they agree to delegate the class-arbitration issue, unless their agreement contains a clear class-arbitration bar. When an arbitration clause is broad and the arbitrator's exclusive powers include discovery, the court should not step in to second guess discovery rulings during the arbitration.