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Feliu Case Summaries:

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Contents

I. JURISDICTIONAL ISSUES: GENERAL

FAA Transportation Exemption Applies to Last-Mile Delivery Drivers. Brock delivered baked goods produced out of state to retail stores within Colorado. He sued for alleged wage and hour violations, and his employer moved to compel arbitration. The question for the Tenth Circuit was whether the FAA's transportation exemption applied which would preclude arbitration of Brock's claims. The appellate court concluded that it did, as it found that the class of worker encompassing Brock's duties were engaged in interstate commerce. The court acknowledged that Brock did not cross state lines in performing his duties but concluded that that was not dispositive. The court found persuasive the holdings from the First and Ninth Circuits that "the final intrastate leg of a journey to be part of a continuous interstate journey where the product's originating company contracts with both the customer and the intrastate delivery driver." The court noted that the baked goods did not come to rest at the warehouse where Brock picked up the goods but rather the warehouse served as a drop-off location for transfer of the goods to a different vehicle. "For these reasons, Brock's intrastate delivery of goods from the warehouse to the various stores on his route is not an isolated transaction; instead, his delivery route forms the last leg of an interstate route." On this basis, the court concluded that the transportation exemption applied to Brock and defendant's motion to compel was appropriately denied. *Brock v. Flowers Foods, Inc.*, 121 F.4th 753 (10th Cir. 2024).

Issue Preclusion Doctrine Applied to Arbitration Award. Hansen's Dodd-Frank retaliation claim was rejected by an arbitrator and the arbitrator's award was confirmed by a federal court. Hansen could not bring a Sarbanes-Oxley claim before the arbitrator as Congress barred the arbitration of such claims. Hansen then brought his SOX claim in court, but it was dismissed by the district court which found on issue preclusion grounds that the arbitrator's award resolved Hansen's SOX claim. The Ninth Circuit affirmed, ruling that the lower court's application of the issue preclusion doctrine was appropriate. The court began by noting that issue preclusion is not limited to the same claims being addressed. The court acknowledged that while SOX claims may not be arbitrated, "nothing in the statute clearly limits the issue-preclusive force of a confirmed arbitral award's resolution of issues within the arbitrator's jurisdiction." Applying traditional issue preclusion principles, the court found that the issues in both proceedings were identical, in particular, "that key aspects of Hansen's SOX claim were precluded by the arbitrator's findings resolving his Dodd-Frank claim." The court also emphasized that Hansen did not point to any "deficiency in the arbitrator's experience or expertise in adjudicating federal statutory claims" or in the arbitration procedures themselves. Finally, the court held that the award here was confirmed by a federal court which constitutes a determination on the merits entitled to preclusive effect. For these reasons, the court dismissed Hansen's complaint, finding that the arbitrator's award precluded each of the claims before it. *Hansen v. Musk*, 122 F.4th 1162 (9th Cir. 2024). See also *Clem v. Tomlinson*, 124 F. 4th 341 (5th Cir. 2024) (arbitral awards confirmed by court are entitled to be given preclusive effect under Texas law).

Arbitrator To Decide Preclusive Effect of Prior Arbitration Ruling. National Casualty Company and Nationwide Mutual Insurance Company agreed many years ago to reinsure Continental Insurance Company against certain risks. Those reinsurance agreements each contained an arbitration clause. A billing dispute arose in recent years, leading Continental to demand arbitration. National Casualty and Nationwide responded by filing a lawsuit in federal court alleging that prior arbitral awards resolved the billing dispute and precluded the new arbitration proceeding. The district court granted Continental's motion to compel arbitration under the FAA. On appeal to the Seventh Circuit, the court noted, "[t]his is not our first encounter with issues of preclusion in the arbitration context. Our case law establishes that the preclusive effect of an arbitral award is an issue for the arbitrator to decide, not a federal court. In no uncertain terms, we have held that '[a]rbitrators are entitled to decide for themselves those procedural questions that arise on the way to a final disposition, including the preclusive effect (if any) of an earlier award.'" The court further noted that the Seventh Circuit case law on the issue "align[s] with Supreme Court precedent." As such, the court concluded, "our only course is to affirm the district court's conclusion that the preclusive effect of the prior arbitral awards is itself an arbitrable issue." *National Casualty Company v. Continental Insurance Company*, 121 F.4th 1151 (7th Cir. 2024).

Preclusive Effect Given to Arbitration Award. The issue presented to a California Court of Appeal was whether an arbitrator's prior finding that an employee failed to prove any Labor Code violations in his wage and hour action precludes that employee from subsequently pursuing a PAGA claim, standing for which was predicated on the same alleged Labor Code violations. The court noted that "this very issue" was recently addressed in *Rocha v. U-Haul Co. of California*, 88 Cal. App.5th 65 (2023) where the court held that an arbitrator's finding that the employees failed to prove any Labor Code violations by the employer precluded those employees from subsequently establishing standing under PAGA where their standing was based on the same purported violation. "The *Rocha* court explained that the issue of whether the [employees] are 'aggrieved employees' based on the alleged [Labor Code] violation was actually litigated in the arbitration and was necessary to resolution of the claims in arbitration." The court held in *Rocha* that the arbitrator's findings were final and binding on the parties to the arbitration and saw no difference in determining whether a plaintiff suffered a Labor Code violation in the context of an individual Labor Code claim for damages than in the context of determining an employee's standing to bring a PAGA claim. Likewise here, an arbitrator determined that the employer did not commit any Labor Code violations and, thereafter, when the employee sought to pursue his PAGA claim, which had been stayed pending conclusion of the arbitration proceeding, the trial court dismissed the action, holding that principles of issue preclusion barred the employee from relying on the same alleged Labor Code violations to establish PAGA standing. For the same reasons set forth in the *Rocha* decision, the appellate court affirmed. *Rodriguez v. Lawrence Equipment, Inc.*, 106 Cal. App.5th 645 (2024).

California Statute Requiring Employer's Payment of Arbitration Fees Does Not Apply to Post-Dispute Arbitration Agreement. The question posed here is whether the California statute providing that a drafting party waives its right to compel arbitration if it fails to timely pay required fees and costs for an employment or consumer arbitration is limited to arbitration arising from a pre-dispute arbitration agreement. The employer and employee in this case entered into an arbitration agreement *after* the dispute arose. On appeal of the trial court's decision to lift the stay of the court proceeding for the employer's failure to pay the arbitrator's invoice, the employer argued that Calif. Code of Civ. P. §1281.98 does not apply because the parties entered into a post-dispute stipulation to arbitrate with mutually agreed upon terms, whereas the statute governs mandatory pre-dispute arbitration agreements. The court agreed and concluded that the Legislature intended to limit the applicability of the statute to arbitration arising from pre-dispute agreements. This is so "because the Legislature provided us with a clear answer by reading section 1281.98 alongside section 1280. Section 1281.98, subdivision (a)(1) refers to the failure to timely pay arbitration fees by 'the drafting party,' a term defined by section 1280, subdivision (e) as 'the company or business that included a predispute arbitration provision in a contract with a consumer or employee.'" As such, the trial court order was reversed, and the matter was remanded with instructions to stay the proceedings pending completion of the arbitration. *Trujillo v. J-M Manufacturing Co., Inc.*, 107 Cal. App.5th 56 (2024). See also *Colon-Perez v. Security Industry Specialists*, 2025 WL 322949 (Cal. App.) (California law requiring employer to pay arbitration costs within 30 days is not preempted by the FAA as it deters employers from delaying arbitration and "promotes speed and efficiency in the resolution of arbitral claims – the essential purpose of the FAA").

Finality of Awards Under California Law Clarified. The arbitrator here issued two interim awards and a final award. The first award did not grant any damages although found, among other things, that a nursing home was guilty of reckless neglect. The arbitrator requested further briefing by the parties and issued a second interim award resulting in the award of $100,000 based on her reckless neglect finding. The final award included payment of attorneys' fees and costs to the prevailing party. The trial court confirmed the first interim award and denied the motion to confirm the final award. The California appellate court reversed, finding that the California Arbitration Act allows a court to review only awards which resolve all issues submitted for resolution. As the first interim award did not constitute an award under California law, it was not subject to judicial review and could be modified by the arbitrator. The court emphasized that the arbitrator in the first interim award "expressly reserved for further proceedings her ultimate decision on whether all questions necessary to a determination of the controversy had been resolved and whether either party was entitled to further relief." The court concluded that the arbitrator did not exceed her statutory authority by modifying the first interim award and directed the trial court to confirm the final award. *Ortiz v. Elmcrest Care Center*, 106 Cal. App.5th 594 (2024),

review denied (Jan. 15, 2025). Cf. *Hirschler v. Schiff*, 84 Misc. 3d 1260 (A) (N.Y. Sup. Ct. 2025) (award issued by Rabbinical court ruled not final as the "award itself references there still existing" other unresolved claims and court remands to same Rabbinical court with direction to "expeditiously issue a final and conclusive arbitration award on all matters subject to the arbitration agreement").

Case Shorts

- *Puris v. TikTok, Inc.*, 2025 WL 343905 (S.D.N.Y.) (claim of retaliation for raising sexual harassment claim not arbitrable as it falls within bounds of Ending Forced Arbitration Act).
- *Casey v. Superior Court of Contra Costa County*, 2025 WL 366693 (Cal. App.) (Ending Forced Arbitration Act preempted employer's motion to compel arbitration of state statutory discrimination claims based on conflict preemption principles).
- *Technical Security Integration v. EPI Technologies*, 126 F.4th 557 (7th Cir. 2025) (whether party's initiation of litigation due to claim that opposing party failed to mediate, which was a condition precedent to litigation, in a timely fashion is a fact question precluding summary judgment).
- *Fleming v. Kellogg Company*, 2024 WL 4534677 (6th Cir.) (bar on arbitration of representative actions is invalid as it denies retirees the right under ERISA to bring fiduciary claims on a representative basis and therefore such claims must be heard in court).
- *In re Application of financialright claims*, 2024 WL 4818177 (D. Del.) (Section 1782 empowers a court, as is the case here, to order discovery related to a foreign proceeding but not to compel arbitration associated with that request for discovery).
- *City and County of Butte-Silver Bow v. Butte Police Protective Association*, 559 P.3d 1248 (Mont. 2024) (remand to arbitrator to fashion appropriate remedy was improper where court relied on post-award independent medical evaluation that was a finding of fact outside the scope of arbitrator's opinion).
- *Karibu Home Builders v. Keenum*, 2024 WL 5178333 (Ala.) (court not divested of subject matter jurisdiction by arbitration agreement; rather, it retains jurisdiction to rule on such substantive arbitrability issues as the validity and scope of the arbitration provision itself).
- *Ashley v. Clay County*, 125 F.4th 654 (5th Cir. 2025) (court must rule in first instance on immunity claim raised by governmental entity prior to ruling on motion to compel arbitration).
- *HD Hyundai Construction Equipment v. Southern Lift Trucks*, 2025 WL 225199 (Ala.) (court erred in enjoining related arbitration proceeding in favor of court proceeding in order to prevent possible inconsistent result).

- *Espin v. Citibank, N.A.*, 126 F.4th 1010 (4th Cir. 2025) (the Servicemembers Civil Relief Act did not bar arbitration of claims alleging violations of the statute).
- *Digital Forensics Corp. v. King Machine, Inc.*, 2025 WL 63935 (Ala.) (motion to compel granted where fraud in inducement claim was directed at the agreement as a whole rather than at the arbitration provision in particular).
- *Lakah v. UBS A.G.*, 2024 WL 4555701 (S.D.N.Y.) (order by court dismissing claims for failing to make arbitration payments not an award subject to judicial review).
- *Certain Underwriters at Lloyd's London v. Belmont Commons*, 2025 WL 239087 (E.D. La.) (equitable estoppel may not be used under Louisiana law to subject domestic insurers to the terms of the New York Convention).

II. JURISDICTIONAL CHALLENGES: DELEGATION, ESTOPPEL, AND WAIVER ISSUES

Standard for Delegation in Third Circuit Clarified. Discovery regarding whether the parties have entered into an arbitration agreement would be warranted where the existence of such an agreement is in dispute. But "[i]n the absence of a factual dispute, there is nothing to discover and thus no need to delay a decision on the motion to compel." The trial court here ordered discovery, but the Third Circuit reversed, finding there to be "no factual dispute about the existence of the agreement to arbitrate. No one denies that the parties entered into an agreement or that it is valid." What was in dispute, according to the court, was "the scope and enforceability of the agreement." Since the parties had delegated threshold arbitrability questions to the arbitrator, the court concluded there was "no traditionally resolvable challenge to the motion to compel" which it directed the district court to confirm. *Young v. Experian Information Solutions*, 119 F. 4th 314 (3d Cir. 2024).

Delegation Provision Enforced. Before a dispute may be sent to arbitration, a court must determine whether a valid arbitration agreement exists and, if one does, whether it includes a delegation clause tasking the arbitrator with deciding whether the dispute is covered by the agreement. The agreement between the parties here contained such a delegation clause and, on that basis, the district court granted defendant's motion to compel arbitration. On appeal, the Fourth Circuit noted that "if there is a valid delegation clause, a court may not decide an arbitrability question that the parties have delegated to an arbitrator even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless." Concluding that the "district court followed those rules here," the Fourth Circuit affirmed, finding that the arbitration provision at issue "contains a delegation clause that clearly and unmistakably delegates the question of arbitrability to the arbitrator." *Modern Perfection v. Bank of America*, 126 F.4th 235 (4th Cir. 2025).

Case Shorts

- *Bluebird Property Rentals v. World Business Lenders*, 559 P.3d 834 (Mont. 2024) (party's agreement to arbitrate "any and all disputes" did not constitute clear and unmistakable delegation of arbitrability issues to the arbitrator).
- *Wu v. Uber Technologies, Inc.*, 2024 WL 4874383 (N.Y.) (alleged ethical violation by employer's counsel, even if proven, did not constitute grounds to bar enforcement of arbitration agreement or to nullify an otherwise enforceable delegation provision requiring such claims to be decided by arbitrator).
- *5-Star General Store v. American Express Co.*, 2024 WL 4933005 (D. R.I.) (court, not arbitrator, decides whether party that fails to pay arbitration fees is in default under Section Three of the FAA).
- *Marin v. Magical Cruise Co.*, Case No. 6:24-cv-1049 (M.D. Fla. 2024) (employer did not waive its right to arbitrate by participating in state court proceedings where it did so "to parse out the true nature of Plaintiff's claims to determine if those claims were subject to the arbitration provision").

III. JURISDICTIONAL ISSUES: UNCONSCIONABILITY

Arbitration Agreement Unconscionable Under California Law. Jenkins was required to sign an arbitration agreement on her first day of employment. She later resigned her employment and brought an unfair competition class action against her former employer, which moved to compel arbitration. The trial court ruled that the arbitration agreement was unconscionable, and the California Court of Appeal affirmed. The court found the agreement to be procedurally unconscionable, observing that Jenkins could not be expected to negotiate the terms of the agreement that had been pre-signed by the employer's Chief People Officer months before. The court also held the agreement to be substantively unconscionable on four grounds. First, the court ruled that there was a lack of mutuality because only the employer could seek injunctive relief. Second, the court found that the statute of limitations shortened to one year was unreasonable. Third, the court held unconscionable the provision requiring Jenkins to share equally the costs of the arbitration. The court did so even in the face of the AAA rule requiring that the employer pay the full cost of the arbitration, noting that the arbitration agreement "prevails over the AAA rules." Finally, the court concluded that the agreement unreasonably limited discovery. The parties were entitled to take one fact deposition. The employer argued that this constituted a floor and that the AAA rules allow the arbitrator to order additional discovery. The court rejected this interpretation of the agreement, noting that if the "AAA rules govern and the Agreement's discovery provision merely established a 'floor' for discovery, then the discovery provision is superfluous." Since employees must have sufficient discovery to adequately arbitrate their claims, the court concluded that the employer should not be

relieved of the effect of the agreement's limited discovery provision due to the "serendipity" of the AAA rules. The appellate court further upheld the trial court's refusal to sever the unlawful provisions from the arbitration agreement due to the pervasiveness of the unconscionable terms. *Jenkins v. Dermatology Management, LLC*, 107 Cal. App.5th 633 (2024).

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- *Osterhaus Pharmacy v. CVS Health Corp.*, 2024 WL 4785818 (D. Ariz.) (CVS's requirement in arbitration agreement that local pharmacies deposit at least $50,000 in escrow account to cover possible award in favor of CVS by arbitrator ruled substantively unconscionable).
- *Sanchez v. The Superior Court of Orange County*, 2025 WL 368722 (Cal. App.) (attorney's retainer agreement found to be substantively unconscionable where client was Spanish speaking with limited education and a translation of retainer agreement containing arbitration agreement was not provided).
- *Vo v. Technology Credit Union*, 2025 WL 384496 (Cal. App.) (substantive unconscionability claim defeated by presence of JAMS rule permitting arbitrator to order additional non-party discovery if necessary to allow fair arbitration of employee's statutory discrimination claims).
- *Kelly-Starkebaum v. Papaya Gaming Ltd.*, 2024 WL 5135799 (S.D.N.Y.) (on-line terms of use not procedurally unconscionable where subscriber had option to opt out of arbitration agreement).
- *Gupta v. Legalzoom.com, Inc.*, 2025 WL 311565 (Cal. App.) (provision that requires the arbitrator, but not the parties, to maintain and safeguard the confidentiality of the arbitration proceedings is not substantively unconscionable).
- *Gupta v. Legalzoom.com, Inc.*, 2025 WL 311565 (Cal. App.) (procedural unconscionability claim brought by plaintiff based on alleged oppression rejected where the entity's head of corporate finance planning is educated and was able to negotiate a compensation package that included equity).
- *Kohler v. Whaleco, Inc.*, 2024 WL 4887538 (S.D. Cal.) (challenge to delegation clause in arbitration agreement on procedural unconscionability grounds rejected as plaintiff had 30 days to opt out of requirement to arbitrate).

IV. CHALLENGES RELATING TO AGREEMENT TO ARBITRATE

Clickwrap Agreement to Arbitrate Enforced. An Uber passenger, Wu, brought a personal injury action against the company. Months later, Uber updated its terms of service for all of its users in the United States which included the requirement that all disputes and claims against it were subject to arbitration. The terms of use, including the arbitration agreement, "were accessible through several hyperlinks, including a large black button at the very top of

the email specifically labeled 'Review terms', and the words "Terms of Use" in the first line of the first paragraph, which was distinguished from the Black text surrounding it by the signature blue font indicating a hyperlink." While it was unclear whether Wu clicked on any of the "several prominently-placed hyperlinks", the New York Court of Appeals concluded that Uber placed Wu on inquiry notice of her obligation to arbitrate. Wu argued in response that the obligation to arbitrate should not apply to her complaint which was filed before the terms of use were amended. The majority rejected this contention, finding "Uber's clickwrap process satisfied the contract-formation requirements of offer and acceptance." The majority also declined to rule on Wu's unconscionability claims, finding that such claims may not be categorized as contract formation claims, but rather were for the arbitrator to decide based on the clear delegation provision in the arbitration agreement. For these reasons, the court ruled that Wu's personal injury claims were subject to arbitration and that her unconscionability claims were for the arbitrator to decide. *Wu v Uber Technologies, Inc*., 2024 WL 4874383 (N.Y.). See also *Rogolino v. Walmart*, 2025 WL 396453 (S.D. Fla.) (Walmart on-line customers were put on inquiry notice of terms and conditions including arbitration requirement in browse wrap agreement where the hyperlink is above the "get a quote" button such that a "reasonable consumer could not check out without seeing it"); *Kelly-Starkebaum v. Papaya Gaming Ltd.*, 2024 WL 5135799 (S.D.N.Y.) (mobile game user given proper notice of terms of use containing arbitration agreement where "the terms are hyperlinked with a sentence, written in small text positioned near payment buttons, alerting the user that they are agreeing to the terms by proceeding with their interactions with the applications").

Inquiry Notice Provided to Visually Impaired Customer. Hilbert, who is legally blind, agreed to Uber's terms of use. He did so by relying on a screen reading technology, VoiceOver, which is designed to read aloud information on a popup screen. Hilbert sued Uber alleging discrimination and opposed Uber's motion to compel arbitration by contending that he never received actual notice of Uber's terms of use. The court rejected Hilbert's contention, and instead relied on Uber's demonstration that VoiceOver read aloud that Uber had "updated its terms of use", as well as the hyperlinked terms of use and the statement that "by checking the box, I have reviewed and agreed to the Terms of Use." As a result, the court held that Uber had placed Hilbert on inquiry notice, relying on state law precedent finding inquiry notice "where plaintiffs with visual impairment were provided notice and the opportunity to access the terms of an arbitration agreement." *Hilbert v. Uber Technologies, Inc*., 2025 WL 42725 (D.D.C.).

Non-Signatories Permitted to Invoke Arbitration Agreement on Equitable Estoppel Grounds. Gonzalez, a grocery store employee, brought a putative class action alleging Labor Code violations under the joint employer theory against his employer, Nowhere Santa Monica, and eight other Nowhere LLCs who collectively operate nine organic grocery stores

and cafes. As a condition of his employment, Gonzalez entered into an arbitration agreement with Nowhere Santa Monica, where he exclusively worked for 5 months. In opposition to the defendants' joint motion to compel arbitration, Gonzalez conceded that the arbitration agreement covered his claims as to Nowhere Santa Monica but argued that the remaining defendants failed to establish that the agreement applied to them because they offered no evidence to support their claim that equitable estoppel should apply. The trial court agreed and granted the motion to compel arbitration only as to Nowhere Santa Monica. On appeal by the other Nowhere entities, the appellate court observed that the "claims against the non-Santa Monica joint employers all depend on and are founded in and inextricably intertwined with the employment agreement between [Gonzalez] and Nowhere Santa Monica" which contained an arbitration provision. The court reasoned that because Gonzalez's "theory of liability against the non-Santa Monica entities is that they exercised significant control over Nowhere Santa Monica's employees so as to share its legal obligations, he is equitably estopped from raising the non-Santa Monica entities' nonsignatory status to oppose arbitrating his wage and hour claims against them." Concluding that "it would be unfair for [the employee] to group the non-Santa Monica entities with Nowhere Santa Monica for purposes of wage and hour liability as joint employers while at the same time denying the joint relationship in order to avoid arbitration," the appellate court reversed the trial court order and directed the parties to arbitrate the claims. *Gonzalez v. Nowhere Beverly Hills LLC*, 107 Cal. App.5th 111 (2024). See also *Perry-Hudson v. Twilio*, 2024 WL 4933332 (N.D. Cal.) (non-signatory can enforce on equitable estoppel grounds a plaintiff's arbitration agreement with a website operator, which was not named as a defendant, where allegations of interdependent wrongful conduct by website operator and non-signatory present).

Husband Cannot be Compelled to Arbitrate COBRA Claim. Lubin, the husband of a former Starbucks employee, sued Starbucks on a class basis for alleged violations of the ERISA and COBRA statutes. Starbucks's motion to compel was denied by the district court. The question before the Eleventh Circuit was whether Lubin, as a non-signatory to the arbitration agreement signed by his wife, could be compelled to arbitrate his statutory claims. The Eleventh Circuit ruled that Starbucks could not compel the arbitration of Lubin's claims. The court first denied Starbucks's equitable estoppel argument on the ground that Lubin "is not suing to enforce or avoid any provision of his wife's employment ⋯ [and], is not claiming the benefits of the agreement while simultaneously attempting to avoid its burdens. . .. Rather, Lubin sues based on Starbucks's failure to fulfill its notice duties under COBRA." Similarly, the court rejected Starbucks's attempts to paint Lubin as a third-party beneficiary to his wife's obligation to arbitrate "merely by conferring spousal health coverage on him." In doing so, the court observed "Lubin is not suing to enforce a contractual duty owed by Starbucks under its employment contract with his wife. Instead, he sues under federal law, alleging that Starbucks violated statutory duties that it owed him

under COBRA". For these reasons, the court affirmed the district court's denial of Starbucks's motion to compel. *Lubin v. Starbucks Corp.*, 122 F.4th 1314 (11th Cir. 2024).

Arbitration Term in Sign-in Wrap Agreement Enforced. A sign-in wrap agreement is one in which an on-line user is required to advance through a sign-in screen which states that by continuing the user is agreeing to the terms of service. Plaintiff brought a class action against the Temu website alleging unfair competition and false advertising. Plaintiff denied that she had actual notice of the arbitration agreement. The court ruled that plaintiff had constructive notice because the website provided conspicuous notice of the terms binding plaintiff and plaintiff took actions manifesting her intent to accept those terms. "Temu's hyperlinked Terms of Use and Privacy Policy are capitalized, legible, and appear in bright blue, underlined font, putting Temu customers on constructive notice that they would be bound by the hyperlink policies." The court also noted that Temu customers were required to click "continue" to pass through to the site. The court concluded that "Plaintiff unambiguously assented to Temu's Terms by pressing the 'Continue' button multiple times prior to purchasing items on Temu's Website." *Kohler v. Whaleco, Inc.*, 2024 WL 4887538 (S.D. Cal.).

FINRA Arbitration Enjoined on Equitable Estoppel Grounds. XTI Aircraft engaged Chardan Capital to help with a potential public offering or business combination and subsequently merged with a subsidiary of XTI Aerospace. Sometime thereafter, Chardan initiated a FINRA arbitration against both XTI Aircraft and XTI Aerospace. XTI Aerospace notified FINRA that it objected to being included in the arbitration because it was not a party to, or otherwise bound by, the arbitration provision contained in the Engagement Agreement between XTI Aircraft and Chardan. XTI Aerospace then sought a declaratory judgment that it is not bound by the arbitration provision as well as a permanent injunction barring Chardan from pursuing its claims against it in the pending FINRA arbitration. Noting that XTI Aerospace was not expressly bound by the agreement because it was not a named party or express beneficiary, the court addressed Chardan's assertion that XTI Aerospace was bound by the doctrine of equitable estoppel because the fee structure in the Engagement Agreement incentivized XTI Aircraft to merge with XTI Aerospace's subsidiary. The court was not persuaded that equitable estoppel applied. "Any benefit conferred to Petitioner in the Engagement Agreement was at most indirect. . . . . Any second-order incentive to merge with [XTI Aerospace] flows 'indirectly from the contractual relation' that Respondent and XTI Aircraft created. The incentive is thus 'incidental to the contract's execution' and therefore an 'indirect' benefit to [XTI Aerospace]." Noting that declaratory relief is appropriate here to "afford [XTI Aerospace] relief from uncertainty as to the propriety of its engagement in the Arbitration," the court granted XTI Aerospace's petition and issued a declaratory judgment that XTI Aerospace is not bound by the arbitration provision and permanently enjoined Chardan from pursuing its claims against XTI

Aerospace in the pending FINRA arbitration. *XTI Aerospace, Inc. v. Chardan Capital Markets, LLC*, 2025 WL 240973 (S.D.N.Y.).

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- *Banks v. Doe*, 2024 WL 4611531 (Cal. App.) (claims of sex trafficking and assault brought by model against modeling agency not subject to arbitration under provision limiting arbitration to disputes under the agreement itself).
- *Naimoli v. Pro-Football, Inc.*, 120 F. 4th 380 (4th Cir. 2024) (purchasers of tickets to professional football game served as agents for, and had apparent authority to bind, the user of tickets to arbitration agreement imposed by the team).
- *Pich v. Laseraway*, 2025 WL 314775 (Cal. App.) (employer's failure to sign arbitration agreement where it expressly stated that "by signing" the agreement the parties agreed to its terms bars arbitration of plaintiff's class action claims against it).
- *Huskins v. Mungo Homes*, 444 S. C. 592 (2024), reh'd denied (Jan. 16, 2025) (court declines to sever 90-day statute of limitation period set forth in arbitration agreement because to do so would "impose standard form adhesion contracts on weaker parties [and drafter] would have no downside to throwing in blatantly illegal terms betting they will go unchallenged or, at worst, the courts will throw them out and enforce the rest").
- *Longobardi v. Gulfstream Aerospace Corp.*, 105 Mass. App. 1102 (2024) (new employee manifested assent to dispute resolution program where he "checked a box certifying that he read the DRP and understood its implications; signed the acknowledgment form to certify that he understood the expectation to comply with the policies; and checked an 'I agree' box beside the signature block, stating that he 'agree[d] to all the terms contained herein'").
- *Nelson v. Golden Queen Mining Co.*, 2025 WL 39717 (Cal. App.) (arbitration agreement was separate and distinct from the guidelines in employee handbook which contained disclaimer of enforceability and therefore dispute was arbitrable).
- *Whorton v. Fran Rest, LLC*, 2025 WL 33367 (Wash. App.) (commitment to arbitrate disputes under "team member acknowledgement form" does not apply to employee handbook and therefore wage and hour claims based on handbook terms are not arbitrable).
- *Arevalo v. Pinnacle Farm Labor, Inc.*, 2024 WL 4585753 (Cal. App.), as modified (Nov. 25, 2024) (arbitration agreement between farmhand and landowner may only be invoked on third-party beneficiary grounds by contractor who placed farmhand to work on that landowner's property).
- *Cajun Industries v. Calgon Carbon Corp.*, 2024 WL 4518285 (S.D. Miss.) (signatory plaintiff may not invoke direct benefits estoppel doctrine under Mississippi law

against a non-signatory who has not filed a claim under the agreement with the arbitration provision or seeks to enforce its terms).

- *Stefansky v. Kaufman*, 84 Misc.3d 1222 (A) (N.Y. Sup. 2024) (e-mail exchange evidencing that party was amenable to arbitration before Rabbinical Court did not constitute an enforceable agreement to arbitrate where explicit subject matter was not stated and there was more than one dispute between the parties).
- *Dyer v. New American Funding*, 2024 WL 4861724 (Cal. App.) (motion to compel denied where employee disclaimed use of Adobe Echo Sign to execute arbitration agreement and employer's witness at hearing testified inconsistently).
- *Guillen v. U-Haul Co. of Texas*, 2024 WL 4626080 (N.D. Tex.) (non-signatory, who was listed as an authorized driver of a rental U-Haul truck, can be compelled to arbitrate claim against U-Haul under Texas's direct benefit estoppel theory).
- *Kelly-Starkebaum v. Papaya Gaming Ltd.*, 2024 WL 5135799 (S.D.N.Y.) (mobile game user's assent to terms of use containing arbitration agreement demonstrated where she "deposited money to a [gaming company's] account that they could then use in games").
- *Provenance Hotel Partners Fund I, LLC v. GCKC Provenance, LLC*, 2025 WL 84529 (N.Y. App. 1st Dep't) (arbitration stayed where claims fell within broad carveout in arbitration agreement).
- *Provost v. Lundmark*, 2024 WL 5036409 (Minn. App.) ("arbitration clauses generally live beyond the expiration of the agreement" and therefore dispute relating to exercise of options following expiration of agreement is arbitrable).
- *Lombardo v. Gramercy Court*, 107 Cal. App.5th 1028 (2024) (durable power of attorney signed by nursing home resident did not grant authority to sign arbitration agreement on behalf of resident where box for pursuing legal claims was left unchecked).

V. CHALLENGES TO ARBITRATOR OR FORUM

Failure to Pay Arbitration Fees Constitutes Default under FAA. Over 5,000 merchants brought an antitrust action against American Express, which moved to compel arbitration before the American Arbitration Association. The AAA concluded that Amex was obligated to pay a filing fee of $3,500 per case; Amex instead believed it only was required to pay $925 per case. Amex refused to pay the filing fee as required by the AAA. The district court denied Amex's motion to compel arbitration, noting that "Amex had a contractual duty to abide by AAA Rules, including rules about fees," Section Three of the FAA requires a court to stay proceedings where an enforceable arbitration agreement is applicable unless a party is in "default". The court noted that it did not have the authority to "referee arbitration disagreements." The court emphasized that the AAA, unlike a court, could not compel Amex to pay the filing fee. The court observed that it could not "revisit the AAA's decision

about the fees, force it to reopen the case on Amex's preferred terms, or compel Amex to pay the fees the AAA decided it owed." Amex's actions convinced the court that "Amex clearly is not 'ready' and 'willing' to arbitrate on anyone's terms but its own, and that is not how the arbitration system works." As a result, the court concluded that Amex's actions were inconsistent with its right to arbitrate and found that it has defaulted under Section Three of the FAA which required the rejection of its motion to compel. *5-Star General Store v. American Express Co.*, 2024 WL 4933005 (D. R.I.).

Case Shorts

- *Baker Hughes v. Dynamic Industries*, 126 F.4th 1073 (5th Cir. 2025) (parties' designation of rules of particular arbitral forum does not necessarily constitute selection of that forum as the place where arbitration must be conducted).
- *Gupta v. Legalzoom.com, Inc.*, 2025 WL 311565 (Cal. App.) (procedure allowing employer to strike on alternating basis the last of the seven proposed arbitrators ruled not substantively unconscionable).
- *Baker Hughes v. Dynamic Industries*, 126 F.4th 1073 (5th Cir. 2025) (designation of defunct arbitral forum not integral to parties' contract where alternative forum provided for and therefore court can designate the alternative forum for arbitration).
- *Police Jury of Calcasieu Parish v. Indian Harbor Insurance*, 395 So.3d 717 (La. 2024), reh'g denied, 397 So.3d 424 (2024) (Louisiana statute barring forum selection provision in public contracts requiring resolution outside of state renders unenforceable arbitration provision in insurance policy requiring arbitration in New York of dispute involving political subdivision of state).

VI. CLASS, COLLECTIVE, MASS FILINGS, AND REPRESENTATIVE ACTIONS

New Era Mass Arbitration Rules Held Unconscionable. Live Nation adopted the mass arbitration rules established by a new arbitration provider, New Era. The New Era rules provide, among other things, that: they can be revised with retroactive effect at any time by Live Nation; they apply to purchasers of tickets from Live Nation as well as to those who merely browse Live Nations's website; each side uploads its evidence with the parties having no right to discovery, although the arbitrator can allow additional evidence to be exchanged; three bellwether cases are to be given precedential effect and are binding on cases batched with the bellwether cases even though the non-bellwether claimants had no right to participate in those proceedings, and; a hearing could be held only in the arbitrator's discretion. The district court ruled that the delegation clause in the New Era rules was unconscionable, and the Ninth Circuit affirmed, finding both the delegation provision and the arbitration agreement as a whole unconscionable. The Ninth Circuit began by noting that the New Era rules "are so dense, convoluted and internally contradictory to be borderline unintelligible." The court found the rules to be both

substantively and procedurally unconscionable. The court noted that claimants in non-bellwether cases are bound by rulings in which they may not participate and with no assurance of adequate representation or an opportunity to opt out. The court also found that the rules were "inadequate vehicles for vindication of plaintiff's claims", emphasizing the lack of discovery and noting that "New Era's restrictions on briefing border on the absurd." The court reasoned that the unconscionable nature of the rules permeated the entire arbitration process which prevented the severance of the unconscionable terms. Finally, the court concluded that the FAA did not preempt California's unconscionability law which "relies on generally applicable principles that neither disfavor arbitration nor interfere with the objectives of the FAA." For these reasons, the Ninth Circuit affirmed the district court's ruling and denied Live Nation's motion to compel arbitration. *Heckman v. Live Nation Entertainment, Inc.*, 120 F 4th 670 (9th Cir. 2024).

Case Shorts

- *Ma v. Twitter, Inc.*, 2024 WL 4859090 (N.D. Cal.) (certification of class of Twitter employees who signed arbitration agreement denied on adequacy of representation grounds as putative class members in California not shown to be able to adequately represent employees across the country).
- *Kohler v. Whaleco, Inc.*, 2024 WL 4887538 (S.D. Cal.) (mass arbitration procedure which batched cases to be heard concurrently "alleviates the concern that adjudication of a litigant's claims would be delayed until prior batches of claims are arbitrated" and, therefore, is not substantively unconscionable).
- *Leeper v. Shipt, Inc.*, 107 Cal. App.5th 1001 (2024) (every PAGA claim necessarily includes an individual claim, even when styled as solely a representative action, and therefore individual PAGA claims are subject to arbitration).
- *Huff v. Interior Specialists, Inc.*, 107 Cal. App.5th 970 (2024) (trial court's order compelling arbitration of both individual and non-individual PAGA claims upheld with respect to individual PAGA claim but reversed with respect to PAGA representative claims).
- *Garcia v. The Brigantime, Inc.*, 2025 WL 39402 (Cal. App.), as modified on denial of reh'g (February 4, 2025) (employee must arbitrate individual PAGA claims, but non-individual claims are stayed pending resolution of employee's individual claims in arbitration).

VII. HEARING-RELATED ISSUES

Panel's Rulings Did Not Constitute Misconduct. An arbitration panel's award, in what the court characterized as "one of the largest and most complex construction disputes in the world", was challenged on alleged misconduct grounds. For example, the panel admitted two witness statements despite the witnesses' failure to appear for cross examination at the

direction of their employers. In doing so, the court noted that the parties' hearing protocol specifically allowed the admission of witness statements if the witness's failure to appear was for legitimate reasons, which the court found to be the case here. The court also found a lack of prejudice where the petitioners' cross-examined 23 of its opposition's witnesses, provided seven rounds of substantive briefing, and submitted seven expert reports. The petitioners also argued that the hearing was fundamentally unfair because the panel limited the hearing to five rather than six weeks. The court rejected this contention, pointing out that the parties originally agreed to a three-week hearing that was expanded to five weeks by the panel. Finally, the court rejected the argument that the panel exceeded its powers in rendering its rulings as it found that the decisions reflected the essence of the parties' various agreements. *Chicago Bridge & Iron Co. N. V. v. Refineria de Cartagena S.A.S.*, 2025 WL 71658 (S.D.N.Y.).

Arbitrator's Assessment of Testimony Not Misconduct. Claimant prevailed on her age discrimination claim and was awarded damages, including back pay. The former employer, AutoNation, argued that the arbitrator was guilty of misconduct for allegedly "cherry-picking" testimony regarding claimant's efforts at mitigating his damages. The issue here was claimant's termination from his subsequent employment which AutoNation insisted precluded any award of back pay following claimant's termination from his next employment. The arbitrator ruled that claimant's loss of employment was not willful and under governing law did not constitute a failure to mitigate damages. In so ruling, the arbitrator noted that the subsequent employer testified that claimant did a "good job" but was not a "good fit" for the position. The court rejected AutoNation's contention that the arbitrator cherry-picked the words "good job" and ignored the rest of the witness's account of the termination. Rather, the arbitrator "did not see compelling evidence that [claimant] had acted intentionally or committed a gross or egregious wrong in the lead-up to his termination." For these reasons, the court denied AutoNation's motion to vacate on misconduct grounds or for having exceeded her authority. *Lee v. AutoNation, Inc.*, 2024 WL 4535377 (W.D. Wash.).

Case Shorts

- *Lakah v. UBS*, 2024 WL 4555701 (S.D.N.Y.) (motion to vacate for alleged failure to hear evidence rejected where "the Panel's thorough discussion of the parties' arguments and relevant legal standards for collateral estoppel and *res judicata* provided a justification sufficient to survive vacatur").
- *Chicago Bridge & Iron Co. N. V. v. Refineria de Cartagena S.A.S.*, 2025 WL 71658 (S.D.N.Y.) (claim of prejudice rejected where both sides introduced new arguments in their reply briefs and were permitted by the panel to submit additional materials in response).

VIII. CHALLENGES TO AND CONFIRMATION OF AWARDS

Evident Partiality Claim Against Law Firm Partner Rejected. HBC and Zurich Insurance Company arbitrated a COVID-related dispute, and each selected a party arbitrator. The party arbitrators designated an umpire who, after being selected, joined the Pillsbury Winthrop firm. That firm was adverse to Zurich in a number of COVID-related disputes. Zurich brought an order to show cause seeking to disqualify the umpire, arguing that as a partner in the Pillsbury firm he was inherently conflicted. The umpire declined to withdraw, noting that he had no knowledge of Pillsbury's various litigations with Zurich, that an ethical wall had been established, and that his compensation was not tied to Pillsbury's litigations with Zurich. The trial court denied the application, finding that the FAA applied, and that the application was both premature and failed to demonstrate anything other than an appearance of a conflict rather than an actual conflict of interest. *Zurich American Insurance Company v. HBC U.S. Holdings*, 2021 WL 2787720 (N.Y. Sup. Ct.). The arbitration proceeded and an award in favor of HBC was issued. Zurich sought to vacate the award. The trial court denied application, and the appellate court here affirmed, holding that "Zurich failed to establish, by clear and convincing evidence, evident partiality of one of the arbitrators." The court explained that a claim of evident partiality required that a reasonable person would have to conclude that the arbitrator favored one side. The court observed that in evident partiality cases the "mere failure to disclose a potential relationship to one of the parties does not, in itself, constitute evident partiality, and the question for the court is whether the facts that were not disclosed suggest a material conflict of interest." The court concluded that "the evidence presented by Zurich does not establish that the arbitrator had a material conflict of interest, and we see no basis to find that a reasonable person would have to conclude that this arbitrator would be partial." *Zurich American insurance Company v. HBC U.S. Holdings, Inc.*, 2025 WL 36873 (N.Y. App. 1st Dep't).

Sanctions Awarded on "Uniformly Frivolous" Appeal. The district court granted an employer's motion to compel and in doing so rejected various arguments in opposition to the motion made by plaintiff Retzios. The district court erroneously dismissed rather than stayed the case and therefore Retzios was able to appeal the granting of the motion to compel. The Seventh Circuit found Retzios's arguments on appeal to be "uniformly frivolous", noting that it could not find "a smidgen of support" for one argument and that it "did not get" two other arguments made. The employer moved for sanctions and the appellate court granted the motion. The court referenced authority for the proposition that sanctions are warranted where a party's challenge to arbitration is "objectively groundless." The court noted that arbitration is intended to expedite dispute resolution, but that cannot happen "if one party to the agreement resists tooth and nail. When that happens, the arbitration clause *exacerbates* the conflict: instead of one suit in court, we get one suit in court (about whether to arbitrate), a second controversy before the arbitrator, and

potentially a third in court when the loser tries to get a judge to override the outcome or forces the winner to file suit seeking the award's enforcement." This approach, the court observed, "makes arbitration its own enemy." The court explained that the American Rule is premised on one trial followed by one appeal. "But when one side insists on litigating and appealing *before* arbitration, then pursuing an arbitration, and potentially litigating and appealing *after* arbitration, legal costs go up and the one-suit premise of the American Rule is defeated." The court noted that the employer bore its expenses before the district court but requiring it to also "bear the legal costs of this unnecessary, nay pointless, appeal would be inappropriate." On this basis, the court ordered Retzios to pay the employer's expenses on appeal. *Retzios v. Epic Systems Corp.*, 126 F.4th 1282 (7th Cir. 2025).

Arbitrator's Legal Error Warrants Vacatur Under California Law. Li filed two administrative complaints against her employer, Uber, one when she was employed and the second after her termination. Li did not challenge Uber's motion to compel arbitration. The arbitrator dismissed as untimely Li's claim filed while she was an employee. Li filed a second demand for arbitration, which was timely filed, but the arbitrator concluded that these claims were repackaged to restart the clock. The trial court vacated the arbitrator's second ruling, and the California appellate court here affirmed. Both courts emphasized that the second demand related to Li's termination and was timely filed under California law. Relying on California Supreme Court precedents, the appellate court ruled that the arbitrator's legal error denied plaintiff the opportunity to have her statutory claim heard on the merits warranting a finding that the arbitrator exceeded his powers. The court also rejected Uber's arguments that Li waived her right to challenge the arbitrator's ruling by submitting the timeliness issue to the arbitrator to decide. Finally, the court found no authority for Uber's claim under equitable estoppel principles "that an arbitration award based on legal error that violates an employee's unwaivable statutory rights under [California antidiscrimination laws] and prevents the employee from obtaining a hearing on the merits of her discrimination claim may nonetheless be upheld based on equitable principles." *Li v. Uber Technologies, Inc.*, 2024 WL 5063600 (Cal. App.).

Time to Challenge Award Under FAA Strictly Enforced. The FAA requires a party seeking to vacate an award to do so within 90 days after the award is "filed or delivered." Following issuance of an award, the parties negotiated redactions to the award in the event it was submitted to a court for confirmation or vacatur. Just at the deadline for moving to vacate, one of the parties, Safran Electronics, emailed motion papers to opposing counsel, but counsel declined to accept service. Safran then argued that the time to move for vacatur should have begun to run once the redacted award was agreed upon by the parties. The court rejected this argument, noting that the redacted award was never filed or delivered as contemplated by the FAA. For these reasons, the court concluded that Safron's motion to

vacate was untimely as the proper date to measure timeliness was from the issuance of the award itself. *Safran Electronics v. Exail SAS*, 2025 WL 327921 (S.D.N.Y.).

Case Shorts

- *Lakah v. UBS*, 2024 WL 4555701 (S.D.N.Y.) (arbitration panel did not exceed its authority by concluding that it was bound by the court's earlier factual findings).
- *Principal Securities, Inc. v. Gelbman*, 2025 WL 353020 (Iowa) (arbitrator's award requiring revision of FINRA's U-5 Form based on a finding that it was misleading supported by substantial evidence and is confirmed).
- *MSV Synergy v. Shapiro*, 2024 WL 4931868 (S.D.N.Y.) (losing party's failure to show prejudice based on arbitrator's alleged failure to consider evidence precludes finding that arbitrator exceeded her authority).

IX. ADR – GENERAL

Claimant, Not Respondent, Must Initiate Arbitration. Respondent employer's arbitration policy states that "a party who wants to start the [a]rbitration [p]rocedure should submit a demand within the time periods required by applicable law." Respondent's motion to compel was granted but plaintiffs failed to initiate the arbitration. The trial court ruled that the employer was obligated to initiate the arbitration and its failure to do so was inconsistent with its right to arbitrate and allowed plaintiffs to pursue their class action in court. The appellate court reversed. In doing so, the court began by observing that the parties' agreement required arbitration, and did not provide for a litigation alternative. With that in mind, the arbitration agreement's reference to wanting to start the procedure "means a desire to seek redress for an employment related legal claim. In other words, it must refer to an action by a plaintiff." The court found further support in the employer's arbitration rules, which were based on the rules of the American Arbitration Association, which identifies the "initiating party" as claimant who must file a demand asserting the remedies sought. The court reasoned that the rules "presuppose that the party filing a demand is seeking a remedy." The court concluded that the "reason this case has not proceeded in arbitration is that the plaintiffs have thus far declined to pursue it there. We now make clear that it is the plaintiffs who must prosecute their case, including submitting a demand as specified in the arbitration agreements, so that it may proceed." *Arzate v. Ace American Insurance Co.*, 2025 WL 309326 (Cal. App.).

Case Shorts

- *Chelico v. American Arbitration Association*, 2024 WL 4648706 (Cal. Super.) (claims against AAA for false advertising denied where plaintiff "failed to allege with reasonable particularity what specific representations AAA made to the public that are false or misleading").

- *Chelico v. American Arbitration Association*, 2024 WL 4648706 (Cal. Super.) (arbitral immunity precludes false advertising claim against AAA).
- *Chicago Bridge & Iron Co. N. V. v. Refineria de Cartagena S.A.S.*, 2025 WL 71658 (S.D.N.Y.) (panel did not exceed its powers by ordering a virtual hearing as the determination was properly submitted to the panel and its ruling arguably interpreted the parties' contract).

X. COLLECTIVE BARGAINING SETTING

Labor Arbitrator, Not Court, Interprets Vesting Provision. The collective bargaining agreement between Xerox and one of its unions expired. Xerox then ended certain benefits for retirees, and the union brought an arbitration under the expired agreement contending that the retiree benefits had vested and could not be terminated. Xerox petitioned under Section 301 of the Labor Management Relations Act to enjoin the arbitration, which the district court granted. The Second Circuit reversed. The court emphasized that the question before it was whether language in the collective bargaining agreement could reasonably be interpreted as creating vested rights. "If so, then the underlying vesting claim proceeds to the arbitrator – as the trier of fact – to conclusively resolve whether benefits had vested, consulting extrinsic evidence if necessary." The court concluded that "the Union had identified language capable of being reasonably interpreted to promise vested benefits that extend beyond the CBA's duration" and was therefore arbitrable. *Xerox Corp. v. Local 14A*, 2025 WL 395729 (2d Cir.).

Case Shorts

- *Newark Fire Officers Union v. City of Newark*, 2024 WL 4943501 (N.J. Sup. Ct. App. Div.) (labor arbitrator exceeded his authority by finding operative contract language clear and unambiguous when referring to current procedures which for 30 years was contrary to the arbitrator's interpretation).
- *City and County of Butte-Silver Bow v. Butte Police Protective Association*, 559 P.3d 1248 (Mont. 2024) (labor arbitrator's award reinstating police officer pending outcome of mental health evaluation "comported with state law governing qualifications for peace officers and was reasonably derived from collective bargaining agreement" and therefore did not violate public policy).
- *International Association of Sheet Metal, Air, Rail, and Transportation Workers v. Kansas City Southern Railway Co.*, 126 F.4th 603 (8th Cir. 2025) (Railway Labor Act requires that the National Railroad Adjustment Board, not a court, rule on ambiguity in arbitration award where arbitrator awarded full benefits, but questions arose as to whether vacation pay was intended to be included).
- *International Brotherhood of Teamsters v. Republic Airways*, 2025 WL 354419 (7th Cir.) (dispute relating to a pre-hire agreement between union pilot and airline relating to

incentive payments constitutes minor dispute under the Railway Labor Act making it subject to arbitration).

XI. NEWS AND DEVELOPMENTS

SIAC Publishes Updated Arbitration Rules. The Singapore International Arbitration Centre issued updated arbitration rules which took effect on January 1, 2025. Among the amendments to the rules is the enhancement of the emergency arbitration procedures allowing for ex parte emergency relief. The rules establish a new "streamlined procedure" for disputes under one million dollars which require selection of a single arbitrator within three days of notification of application of the procedure. Under the streamlined procedure, the presumption is that a hearing would not be held but rather the matter will be heard on submission unless the tribunal concludes otherwise. An award must be issued within three months of the constituting of the tribunal. The new rules also require disclosure of any third-party funding. Also of note, the revised rules add a new ground to challenge service by an arbitrator, where the arbitrator becomes *de jure* or *de facto* unable to perform his or her functions.

Supreme Court Declines Review of ERISA Arbitration Ruling. The Sixth Circuit ruled in *Tenneco, Inc. v. Parker* that ERISA plan documents that restricted participants to acting only in their individual capacities was an impermissible prospective waiver of the statutory right under §502(a)(2) to bring claims on behalf of the entire plan and was therefore in violation of the effective vindication doctrine. On these grounds, the Sixth Circuit upheld a lower court's denial of Tenneco's motion to compel arbitration of ERISA fiduciary breach claims that sought relief on behalf of the plan. The Supreme Court denied certification without comment. *Tenneco, Inc. v. Parker* , 2025 WL 76490 (U.S. January 13, 2025).

Russia State Immunity Claim Rejected. A London appeals court has rejected Russia's latest attempt to avoid payment of a $63 billion arbitration award based on the collapse of Yucas Oil in 2006. The court rejected Russia's attempt to invoke sovereign immunity as it found the issue had been resolved previously in the Dutch courts. The court reasoned that its ruling was "in accordance with another important public policy, recognized internationally in the New York Convention, which is that awards, even against states, should be honored without delay and without the kind of trench warfare seen in the present case." *The Russian Federation v. Hulley Enterprises Ltd.*, Case No. CA-2023-002278 (2025).

XII. TABLE OF CASES