FELIU NEUTRAL SERVICES LLC

Alfred G. Feliu
afeliu@feliuadr.com
212-763-6801

Feliu Case Summaries:

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Contents

I. JURISDICTIONAL ISSUES: GENERAL

Consolidation of Mass Claims Authorized. Plaintiffs filed over 7,200 individual arbitration demands against Starz Entertainment related to the same issue. JAMS, interpreting the arbitration agreement, consolidated the cases. Plaintiffs rejected each arbitrator nominated. Plaintiffs then moved to compel arbitration, arguing that Starz refused to arbitrate these claims individually as contemplated by its terms of service. The district court denied plaintiffs' motion, finding that plaintiffs were not aggrieved under the FAA and the Ninth Circuit affirmed. The court emphasized that Starz "engaged in the arbitration process every step of the way", including paying the initiation fees, participating in the selection of the arbitrators, and remaining willing to proceed with the consolidated arbitration, noting "it was JAMS, not Starz, that made the decision to consolidate so it is not clear how the decision can be characterized as a refusal by Starz to arbitrate." The court also disputed plaintiffs' interpretation of the terms of service requiring individual arbitrations. The agreement provided that the parties may "bring claims against the other only in your or its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding." The court explained that the agreement did not reference individual arbitrations, only barred class or representative actions. Consolidation, the court pointed out, is not the same as class or representative arbitrations. "There is a critical difference, however. In a class or representative arbitration, an individual brings claims on behalf of others, whereas a claimant in a consolidated arbitration brings the claim in her *individual* capacity. It is that representative feature, not the mere numerosity of parties, that forms the critical element" distinguishing class and representative actions from consolidated proceedings. The court commented that it "strains credulity" that the court's job was to second guess an independent arbitration provider's application of its own rules. The court concluded that based on plaintiffs' actions it appears that the "true motivation underlying the mass-arbitration tactic deployed here, which appears to be geared more toward racking up procedural costs to the point of forcing Starz to capitulate to a settlement than providing the allegations of data breach to seek appropriate redress on the merits." *Jones v. Starz Entertainment, LLC*, 129 F.4th 1176 (9th Cir. 2025).

Application of Ending Forced Arbitration Act's Effective Date. The Ending Forced Arbitration Act ("EFAA") allows an individual claiming sexual harassment or assault to elect judicial resolution, rather than arbitral resolution, of their claims even if the individual previously agreed to arbitrate such claims if they arose. Congress provided that EFAA "shall apply with respect to any dispute or claim that arises or accrues on or after the date of enactment of this Act," which was March 3, 2022. Here, Plaintiff quit her job, and all of the alleged sexual harassment occurred before the effective date of the EFAA. As a matter of first impression for the Sixth Circuit, the issue to be resolved was whether the EFAA applied, which turned on whether plaintiff's dispute or claim "arose" or "accrued" on or after March 3, 2022. The court of appeals started with the statutory text, noting that it is a "cardinal principle of statutory construction . . . to give effect, if possible, to every clause and word of

a statute." Observing that the phrase "any dispute or claim that arises or accrues" uses the disjunctive "or," the court surmised that Congress intended to apply different meanings to the terms in that phrase: "the grammatical structure of the sentence demonstrate[es] that the EFAA applies to *claims that accrue and disputes that arise* on or after March 3, 2022." Turning to additional principles of statutory interpretation, the court concluded that a "claim" refers to a plaintiff's "cause of action" and that "a claim accrues" under the EFAA "when the plaintiff has a complete and present cause of action." The word "dispute," on the other hand, "denotes a controversy between the parties regarding certain kinds of conduct, conduct which may support claims under state and federal law." As such, the determination of when a dispute arises is "fact-dependent" but "the relevant question is when the parties became adverse to one another." Finally, the court opined that "it appears [Plaintiff's] claim accrued before the date of enactment, March 3, 2022, because she quit her job several months prior, and any injury, therefore, preceded that date." However, recognizing that the district court did not address application of the EFAA in its initial opinion, the court remanded the matter for the district court to determine "when the dispute -- the controversy between the parties -- rose under the facts of this case." The Sixth Circuit's statutory interpretation of EFAA is consistent with recent decisions issued by the Second, Third, and Eighth Circuits. *Memmer v. United Wholesale Mortg., LLC*, 135 F.4th 398 (6th Cir. 2025).

Dispute "Arises" Under EFAA At Time Disagreement is Registered. Cornelius brought sexual harassment claims against CVS. She complained to management numerous times between 2018 and 2021, but each complaint was rejected. She sued in 2023 after filing an EEOC charge in August 2022, and CVS moved to compel arbitration. The trial court granted CVS's motion, and the Third Circuit affirmed. The court noted that The Ending Forced Arbitration Act ("EFAA") barred arbitration of sexual harassment disputes arising after March 2022. Cornelius argued that her claims were not arbitrable because the dispute existed after enactment of EFAA, as first reflected in her EEOC charge. The Third Circuit rejected this contention, finding that a dispute arises as required by EFAA "when an employee registers disagreement – through either an internal complaint, external complaint, or otherwise – with his or her employer, and the employer expressly or constructively opposes that position." The court viewed this approach as "intermediate" between the arguments posited by the parties as it "requires some opposition between the employer and employee but is not tethered to a particular process." For these reasons, the court affirmed the district court's ruling that EFAA did not preclude the arbitration of Cornelius' claims as they preceded enactment of the statute. *Cornelius v. CVS Pharmacy, Inc.*, 135 F4th 240 (3d Cir. 2025). See also *Ruiz v. Butts Foods, L.P.*, 2025 WL 1099966 (Tenn. App.) (Ending Forced Arbitration Act applies to entire "case" and not merely to sexual harassment claim barred by statute and therefore precludes arbitration of other claims in the case, including retaliation claim).

Trustee in Bankruptcy's Claim Not Arbitrable. Under New York law, whether a dispute is arbitrable turns on whether the parties agreed to submit disputes to arbitration and, if so, whether the dispute at issue comes within the scope of that arbitration agreement. Here, the agreement to arbitrate was contained in an insurance agreement between Allied World, as the insurer, and Constellation Healthcare Technology ("CHT"), as the policyholder. The arbitration clause provided that any dispute between the parties which "cannot be resolved by agreement between them within six months, shall be referred to a mutually agreed mediator. If the dispute remains unresolved after mediation, it shall be resolved by arbitration in the London Court of International Arbitration." After CHT and Orion HealthCorp., one of CHT's subsidiaries, filed for bankruptcy, CHT commenced adversary proceedings against a number of CHT's directors and officers. The directors and officers settled and assigned their rights to pursue insurance coverage under the Allied World policy to the Trustee who filed an adversary proceeding against Allied World seeking coverage of those defense costs. Allied World moved to compel arbitration, arguing that the Trustee was seeking relief "in his capacity as the policyholder." The Bankruptcy Court disagreed and denied the motion to compel, which was affirmed by the district court. On appeal to the Second Circuit, the court observed that the Trustee's claims here relate entirely to Allied World's duty to defend and indemnify the directors and officers, who are insureds of the policy and not policyholders of it. "Indeed, the complaint alleges that the Trustee received the claims pursued here via assignment by the Directors and Officers and stands in their shoes as assignee." As such, the court held that arbitration of the claims cannot be compelled. In addition, the court held that the Trustee could not be compelled to arbitrate under "the narrow category of cases where nonsignatories may be compelled to arbitrate under 'the direct benefits theory of estoppel,' because although the directors and officers sought benefits under the Allied World Policy, they did not 'assume performance' of the Allied World policy in the place of the policyholder." *Orion HealthCorp, Inc. v. Allied World National Assurance Co*, 2025 WL 1129201 (2d Cir.).

Case Shorts

- *Certain Underwriters at Lloyd's, London v. 3131 Veterans Boulevard, LLC*, 136 F.4th 404 (2d Cir. 2025) (New York Convention is self-executing and therefore Louisiana law may not reverse preempt it under the McCarren-Ferguson Act).
- *Cargill Financial Services International v. Barshchovskiy*, 2025 WL 522108 (S.D.N.Y.) (personal jurisdiction not required to recognize, rather than enforce, a foreign judgment confirming an arbitration award).
- *Oppenheimer and Co. v. Mitchell*, 135 F.4th 837 (9th Cir. 2025) (defrauded investors could not bring FINRA arbitration against leader of Ponzi scheme, Woods, even though he was affiliated with Oppenheimer as the investors were not customers of Oppenheimer but rather of a non-affiliated associate of Woods).

- *Davitashvili v. Grubhub, Inc.*, 131 F.4th 109 (2d Cir. 2025) (antitrust claims against Grubhub are not subject to Grubhub's arbitration provision as claims relate to higher prices paid by restaurant customers, including those who did not sign up with Grubhub, resulting from the alleged anticompetitive practices employed by Grubhub).
- *Wilson v. Kemper Corporate Services*, 134 F.4th 339 (5th Cir. 2025) (federal court's confirmation of award reversed as diversity jurisdiction lacking).
- *Tesla Motors v. Balan*, 134 F.4th 558 (9th Cir. 2025) (diversity jurisdiction lacking to hear and decide motion to confirm award as arbitrator ruled against claimant and therefore requisite $75,000 in controversy was absent even though amount sought by claimant exceeded that amount).
- *Design Gaps, Inc. v. Shelter, LLC*, 130 F.4th 143 (4th Cir. 2025) (federal court lacks jurisdiction to decide vacatur motion as federal copyright law did not provide a basis for the court to do so and no other basis for federal court jurisdiction is present).
- *Durant v. Alerion Yachts*, 2025 WL 1361700 (D. Mass.) (FAA is not displaced by generalized choice of law provision applying Massachusetts law where federal court has diversity jurisdiction and dispute implicates interstate commerce).
- *Michaud v. Travelers Indemnity Co.*, 232 Conn. App. 459 (2025) (denial of motion to vacate, without motion to confirm, does not constitute final order under Connecticut law allowing for interlocutory appeal).
- *JSC DTEK Krymenergo v. Russian Federation*, 2025 WL 1148347 (D.D.C.) (motion to dismiss denied where claim that Russia did not intend to arbitrate particular dispute goes to arbitrability of the dispute and not jurisdictional question under the Foreign Sovereign Immunities Act).
- *Sanders v. Superior Court of Los Angeles County*, 2025 WL 1303386 (Cal. App.), as modified (May 14, 2025) (California statute requiring payment of arbitration fees within 30 days not preempted by FAA as it furthers goal of expeditious resolution of disputes).
- *Porteous v. Flowers Foods, Inc.*, 766 F. Supp.3d 1093 (D. Or. 2025) (intrastate "last mile" delivery driver delivering baked goods to retail outlets is part of an unbroken stream of interstate commerce and is subject to the FAA's transportation worker exemption).
- *Porteous v. Flowers Foods, Inc.*, 766 F. Supp.3d 1093 (D. Or. 2025) (the owner of a delivery service who also delivered the goods qualified as a transportation worker under the FAA's transportation worker exemption).
- *Adler v. Gruma Corp.*, 135 F.4th 55 (3d Cir. 2025) (father and son delivery driver duo who delivered and put products on shelves were transportation workers and therefore qualified for the FAA transportation worker exemption).

- *Prahl v. Allstate Northbrook Indemnity Co.*, 110 Cal. App.5th 118 (2025) (California's emergency rules issued during the COVID pandemic extending the statute of limitations for "civil actions" did not apply to arbitrations).
- *DOCRX, Inc. v. Piedmont Comprehensive Pain Management Group*, 2025 WL 728954 (Ala.) (order compelling arbitration is a final judgment and lower court is without jurisdiction to lift stay based on matters raised after the time to appeal was filed).
- *Charles House Condominium Association v. Old Republic Union Insurance Co.*, 2025 WL 1068256 (E.D. La.) (Louisiana Supreme Court's decision in *Police Jury of Calcasieu Parish* did nothing to change requirement to arbitrate where the New York Convention applies to insurance disputes with foreign insurers are subject to arbitration).
- *Roose v. Bath Fitter Tennessee, Inc.*, 2025 WL 1090198 (Tenn. App.) (vendor contract requiring parts from overseas involves interstate commerce requiring application of the FAA rather than the Tennessee Arbitration Act).
- *R.K. Metals v. E & E Co.*, 404 So.3d 123 (Miss. 2025) (party's president, who signed personal guarantee for lease at issue in his individual capacity, was a necessary party to the arbitration on equitable estoppel grounds).

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

Delay in Seeking Arbitration Plus Substantial Participation in Litigation Constitutes Waiver. When a court evaluates whether a party implicitly waived its right to arbitrate, the central inquiry is whether that party acted inconsistently with the right to arbitrate including whether that party "participated in litigation, substantially delayed its request for arbitration, or participated in discovery." According to the Seventh Circuit, the party moving to compel arbitration in this matter, Al-Nahhas, could not claim that it was unaware of its ability to compel arbitration as it "attached the loan agreement, with the arbitration provision, to the complaint." Nevertheless, Al-Nahhas waited fourteen months before moving to compel arbitration and, during that time, participated in the litigation, including discovery, and produced thousands of documents. It also continually assured the court that it would abide by court ordered discovery deadlines and responded to two different requests from the court for status updates. Noting that Al-Nahhas's delay was "substantial" and "inexcusable," the Seventh Circuit found this conduct to be "inconsistent with an intent to pursue arbitration" and had "no trouble concluding that [Al-Nahhas] waived [its] right to arbitrate." *Al-Nahhas v. 777 Partners LLC*, 129 F.4th 418 (7th Cir. 2025). See also *Hofer v. Boladian*, 111 Cal. App.5th 1 (2025) (plaintiffs intentionally relinquished their arbitration right when they filed successive motions for injunctive relief, propounded hundreds of discovery requests, demanded a jury trial, and paid jury fees and only moved to compel arbitration after being countersued). Cf. *Fisher v. FCA US LLC*, 2025 WL 582451 (E.D. Mich.) (claim of waiver of right to arbitrate rejected where "no evidence" that the party "continued to

actively litigate after it had sufficient information to definitively determine (1) that the Arbitration Provisions existed or (2) the terms of those provisions."); *Newport Associates Development Co. v AIG Specialty Insurance,* No. A-0295-24 (N.J. App. Div. May 28, 2025) (insurer waived its right to arbitrate claims by waiting six years to move to compel while in the interim obtaining discovery that might not have been available in arbitration setting); *SCPS, LLC v. Kind Law*, 2025 WL 728994 (D.D.C.) (party did not waive its objection to arbitration by filing a TRO on an emergency basis and a motion for a protective order).

Arbitrability Issues Delegated to Arbitrator Where AAA Rules Incorporated. The parties' agreement granted broad, exclusive authority to the arbitrator to rule on arbitrability questions, adding that the parties intended to divest the courts of power in this regard. The arbitration agreement directed that the AAA's Rules applied, and Texas law governed. Parallel arbitrations were held with one arbitration finding class arbitration was authorized under the arbitration agreement, and a second deciding that was not the case. The district court confirmed both awards. The question for the Fifth Circuit was whether class arbitration was authorized. The court concluded that it was "reluctantly bound" to conclude that the mere incorporation of the AAA Commercial Arbitration Rules "constitutes sufficient clear and unmistakable evidence that the parties *intended* to delegate class-wide arbitrability to the arbitrator." The court noted that in prior rulings it held that the incorporation of the AAA's Commercial Rules constituted consent to the AAA's Class Arbitration Supplementary Rules. The court emphasized that the Supplementary Rules "incorporated here specifically delegates the question of class arbitrability" to the arbitrator. Although it found its own circuit court precedent of questionable validity, the court concluded that it was bound to rule that incorporation of the AAA's Rules constituted clear and unmistakable evidence supporting the parties' intent to arbitrate the class arbitration question. *Sullivan v. Feldman*, 132 F.4th 315 (5th Cir. 2025).

Gateway Questions of Arbitrability Properly Delegated to Arbitrator. Generally, when asked to compel arbitration under a contract, a court determines whether the parties agreed to arbitrate their dispute. "The FAA, however, allows parties to agree that an arbitrator, rather than a court, will determine gateway questions of arbitrability." Such an agreement, commonly known as a delegation clause, "requires clear and unmistakable evidence" that the parties agreed to have an arbitrator decide arbitrability. The delegation clause here provided: "[any] claim or dispute ⋯ *including* ⋯ *the arbitrability of [any] claim or dispute* may be resolved by arbitration." Noting that the Sixth Circuit recently held "nearly identical language and structure constituted clear and unmistakable evidence that the parties intended to delegate questions of arbitrability to the arbitrator", the district court concluded the same is true with respect to the delegation clause at issue here. As such, defendants' motion to compel arbitration was granted. *Fisher v. FCA US LLC*, 2025 WL 582451 (E.D. Mich.). See also *Berkeley County School District v. HUB International Ltd.*, 130 F.4th 396 (4th

Cir. 2025) (court erred by deciding whether dispute fell within bounds of arbitration agreement where the agreement included a clear and unmistakable delegation of arbitrability disputes to the arbitrator).

Case Shorts

- *SCPS, LLC v. Kind Law*, 2025 WL 728994 (D.D.C.) (party did not waive its objection to arbitration by filing a TRO on an emergency basis and a motion for a protective order).
- *Adler v. Gruma Corp.*, 135 F.4th 55 (3d Cir. 2025) (court could *sua sponte* decide that delegation clause required arbitrator to decide scope of arbitration provision where parties presented contract language and asked court to interpret it).
- *AKM Enterprises v. Hayes*, 2025 WL 593385 (S.D. Tex.) (court, not arbitrator, must decide whether an enforceable agreement containing an arbitration clause exists, even if contract contains a delegation provision).
- *Parker v. Kearney School District*, 130 F. 4th 649 (8th Cir. 2025) (bus company waived its right to arbitrate by moving for summary judgment against plaintiff students without moving to compel arbitration even though summary judgment motion challenged plaintiffs' right to invoke benefits of agreement between bus company and school district).
- *Karlin v. UATP Springfield*, 706 S.W.3d 810 (Mo. 2025) (delegation provision requiring arbitration of claims enforced where challenge to arbitration was generally to the agreement itself and not to the delegation provision in particular).
- *Burke Moore Law Group v. Drew Eckl & Farnham*, 914 S.E.2d 333 (Ga. App. 2025) (a prior law firm may not invoke the arbitration agreement in its partnership agreement to require the new law firm of its former partner to arbitrate a dispute regarding payment of contingency fees).
- *Spire Global Subsidiary v. Northstar Earth & Space, Inc.*, 2025 WL 588585 (S.D.N.Y.) (court must decide question of arbitrability where no clear and unambiguous delegation to arbitrators shown and fact that arbitration was filed before court action did not require application of first-filed rule).

III. JURISDICTIONAL ISSUES: UNCONSCIONABILITY

Standard for Severance in Substantive Unconscionability Setting Explained. Defendant was sued by a former employee and unsuccessfully moved to compel arbitration. The California trial court and Court of Appeal concluded that the arbitration agreement contained unconscionable provisions and declined to enforce it. The California Supreme Court agreed that certain provisions were substantively unconscionable. Most notably, the court found there was a lack of mutuality in the covered and excluded claims; that the provision placing time limits on filing covered claims "substantially shorten[ed] the time for

an employee to pursue those claims", and; that the attorneys' fees provision had "the potential to result in an unlawful award." The court noted that "no bright line rule *requires* a court to refuse enforcement if a contract has more than one unconscionable term. Likewise, a court is not *required* to sever or restrict an unconscionable term if an agreement has only a single such term." The Court explained that the severance analysis is "qualitative," not "quantitative", and the inquiry is "whether the central purpose of the contract is tainted with illegality" by the offending provisions. If it is, then "the contract cannot be cured and the court should refuse to enforce it." On the other hand, "courts may liberally sever any unconscionable portion of a contract and enforce the rest when: the illegality is collateral to the contract's main purpose; it is possible to cure the illegality by means of severance; *and* enforcing the balance of the contract would be in the interests of justice." The matter was remanded to the appellate court for it to "consider the severance question anew . . . in a manner consistent with this opinion." *Ramirez v. Charter Communications, Inc.*, 16 Cal.5th 478 (2025).

AAA Commercial Rule Requiring Cost-Sharing Unconscionable in Employment Context. Hairstylists brought a class action against their salon, which moved to compel arbitration. The arbitration agreement between the parties applied the AAA's Commercial Rules which, among other things, require that the parties share equally the costs of the arbitration. The district court ruled that that provision was unconscionable as applied in this case and instead ruled that the AAA's Employment Arbitration Rules should apply. The Sixth Circuit affirmed. The court rejected the stylists' argument that the full arbitration provision should be invalidated. The court emphasized that the parties' agreement included a severance provision. "The agreement offers no handhold for invalidating the entire arbitration clause based on the cost-shifting section. The better approach is the district court's: enforce the arbitration agreement without the cost-shifting provision." The court reasoned that the substitution of the Employment Arbitration Rules in fact helped the stylists. "Remember, they agreed to arbitrate the dispute with the AAA. All that happened was that the court removed the *less* favorable (and costly) Commercial Rules – rules that would have been made arbitration costs prohibitive." The court concluded that "this cost-shifting clause because it was unconscionably burdensome to the stylists" made the substitution of the Employment Rules for the Commercial Rules an appropriate application of the parties' contractual severance terms. *Gavin v. Lady Janes's Haircuts for Men*, 135 F.4th 461 (6th Cir. 2025).

Unconscionability and Severance of Offending Provisions. An Arizona district court ordered four independent pharmacies to arbitrate their claims against CVS, finding that although three provisions in the parties' arbitration agreements were substantively unconscionable, they could be severed and the remainder of the terms enforced. The unconscionable provisions were (1) a unilateral provision granting remedies only to CVS

upon breach of the agreement by the pharmacies, (2) an escrow provision requiring the pharmacies to post an "unduly oppressive" sum of money before initiating an action, and (3) a "one-sided" confidentiality provision that effectively prevented the pharmacies from obtaining relevant discovery pertaining to other arbitral adjudications involving CVS. Observing that each of the agreements at issue contained severability provisions, the court noted that "severance is a matter of judicial discretion" and stated that "[i]n Arizona, even if one part of a severable contract is void, the court may enforce the remainder of the contract." Finding that "none of the unconscionable provisions taint the central purpose of the arbitration agreement," the court concluded that "there exists good reason to sever the objectionable portions of the arbitration agreement and enforce the residue." Accordingly, the parties were ordered to submit the matter to arbitration "pursuant to the terms of their arbitration agreements, except that the unenforceable provisions of the agreements identified herein shall not be enforced." *Osterhaus Pharmacy, Inc. v. CVS Health Corp.*, 2025 WL 472731 (D. Ariz.).

Case Shorts

- *Jones v. Starz Entertainment, LLC*, 129 F.4th 1176 (9th Cir. 2025) (party seeking arbitration in mass arbitration context may not raise issue of unconscionability of the very arbitration provision it is seeking to apply).
- *Meadows v. Cebridge Acquisition, LLC*, 132 F. 4th 716 (4th Cir. 2025) (absence of opt-out provision by itself does not render arbitration agreement procedurally unconscionable).
- *Roose v. Bath Fitter Tennessee, Inc.*, 2025 WL 1090198 (Tenn. App.) (claim of unconscionability rejected where arbitration provision was on the backside of agreement and was not "hidden" or inconspicuous).

IV. CHALLENGES RELATING TO AGREEMENT TO ARBITRATE

Agreement Formation is "Fact Intensive" Inquiry. Website Operator moved to compel arbitration of Consumers' putative class action. Consumers opposed, claiming they never accepted Website Operator's offer to arbitrate and therefore no agreement was formed. The district court denied the Website Operator's motion. On appeal to the Ninth Circuit, the court observed that the question before it is whether the Consumers are bound by the Website Operator's Terms of Service and noted that "[a]nswering this question requires us to consider whether the users were on inquiry notice of proposed contractual terms and whether we can fairly infer that their use of the site signaled an agreement to contract." The first step of the "inquiry-notice internet contract formation test" asks "whether the website provides reasonably conspicuous notice of the terms to which the consumer will be bound." This test has two aspects: the visual design of the webpages and the context of the transaction, which "should be considered together." Under California law, "this inquiry is

fact-intensive and is informed by the totality of the circumstances." Here, a link to the Website Operator's Terms of Service was provided but Consumers were not required to separately indicate that they had read or agree to those terms before using the website's services. In addition, the advisal text was printed in "a lighter color than other text on the page" and was displayed in "relatively small text and not located directly above or below the action button." Taken together, these design elements created the impression that the advisal was "visually buried." As such, the court concluded that Consumers were not on inquiry notice of the website's proposed contractual terms and no agreement was formed. The order denying Website Operator's motion to compel was affirmed. *Godun v. JustAnswer LLC*, 2025 WL1160684 (9th Cir.).

No Assent to Website's Terms of Use. ClassPass sells subscription packages providing subscribers with access to an assortment of gyms, studios, and fitness and wellness centers. Plaintiff navigated through four pages of the company's website to purchase her subscription. On one of those pages, "in the smallest font on the page", there was a link to ClassPass's terms of use (which included an agreement to arbitrate) and language stating: "By clicking 'Sign Up with Facebook' or 'Continue', I agree to the 'Terms of Use' and 'Privacy Policy.'" The Ninth Circuit characterized this type of agreement as a "sign-in wrap agreement" because the website "indicates that some action may bind the user but does not require that the user actually review the terms." Sign-in wrap agreements are enforceable "if (1) the website provides reasonably conspicuous notice of the terms to which the consumer will be bound; and (2) the consumer takes some action, such as clicking a button or checking a box, that unambiguously manifests his or her assent to those terms." The court noted that "a user's click of a button can be construed as an unambiguous manifestation of assent only if the user is explicitly advised that the act of clicking will constitute assent to the terms and conditions of an agreement." Here, the plaintiff clicked two buttons to finalize her purchase: a "Continue" button and a "Redeem Now" button. The court observed that plaintiff was, at no point, "explicitly notified of the legal significance of her actions." As such, the court concluded that "a reasonably prudent internet user would not believe they were unambiguously manifesting their assent to the Terms of Use by working their way through ClassPass's multi-page website." The district court order denying ClassPass's motion to compel arbitration was affirmed. *Chabolla v. ClassPass, Inc.*, 129 F.4th 1147 (9th Cir. 2025). Cf. *Dhruva v. CuriosityStream, Inc.*, 131 F. 4th 146 (4th Cir. 2025) (website provided reasonable notice of terms of use which included arbitration provision where contract terms were available via scrolling down or by clicking hyperlink, the terms of use hyperlink was printed in orange on uncluttered background close to the payment tab, and the words used were such that are reasonably prudent user would understand them); *Dhruva v. CuriosityStream, Inc.*, 131 F. 4th 146 (4th Cir. 2025) (clicking the "sign up now" button constituted "unambiguous manifestation of assent"

because the website expressly stated that registering with the site signifies agreement to the terms of use).

Silence Does Not Constitute Acceptance of Offer to Form Arbitration Agreement. Plaintiff was hired on July 8, 2013, and entered into an employment agreement with her employer (Amedisys) at that time. One month later, Amedisys sent an email to all its employees stating: "By clicking 'Acknowledge' below, you will be given access to the Amedisys arbitration program materials, which include a Cover Letter, the Dispute Resolution Agreement, and FAQs. You are required to review these materials. Please read the materials carefully. **Unless you opt out of the Dispute Resolution Agreement within 30 days of today's date, you will be bound by it, which will affect your legal rights.**" (emphasis in original). Amedisys's records indicated that plaintiff signed into her email account, opened the email, and clicked the "acknowledge" button. Plaintiff did not submit an opt-out form. The issue was whether plaintiff accepted Amedisys's offer to form an arbitration agreement. The South Carolina Supreme Court began with the governing rule that "[a]cceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer" and noted that "[s]ilence and inaction can constitute acceptance of an offer, but only in certain circumstances." Under the circumstances here, the court was not persuaded that plaintiff's silence operated as an acceptance. To the contrary, the court found that plaintiff "was performing work in reliance on, and being paid pursuant to, the original July 8 offer" which did not contain an arbitration provision. The court observed that plaintiff continued to perform the work she previously performed for the same pay. The Court therefore concluded that plaintiff's silence and inaction did not constitute acceptance of Amedisys's offer, despite Amedisys's directive that she would be deemed to have accepted the offer if she did not opt out. As such, the Court held that no valid agreement to arbitrate existed and the matter was remanded to the circuit court for discovery and trial. *Lampo v. Amedisys Holding, LLC*, 2025 WL 5444308 (S. Car.).

Case Shorts

- *American Bankers Insurance Co. v. Pickett*, 2025 WL 496442 (Ala.) (insured bound to arbitrate claim against insurance company as any duty owed to insured allegedly breached by insurance company was based on agreement containing arbitration provision).
- *Burke Moore Law Group v. Drew Eckl & Farnham*, 914 S.E.2d 333 (Ga. App. 2025) (a prior law firm may not invoke the arbitration agreement in its partnership agreement to require its former partner's new law firm to arbitrate a dispute regarding payment of contingency fees).
- *Wiener v. Gibson, Dunn & Crutcher*, 237 A.D.3d 634 (N.Y. App. Div. 2025) (non-signatories to law firm engagement letter benefited from the law firm's

representation of them in class action against them and therefore are required to arbitrate disputes as set forth in the engagement letter).

- *Meadows v. Cebridge Acquisition, LLC*, 132 F. 4th 716 (4th Cir. 2025) (cable company's ability to amend arbitration agreement unilaterally did not render the agreement illusory where reasonable notice was provided and plaintiff continued to use cable service).
- *Johnson v. Continental Finance Co.*, 131 F.4th 169 (4th Cir. 2025) (agreement that allows drafter to change any term at its sole discretion was so one-sided and nebulous as to render the agreement and its arbitration provision illusory as lacking consideration necessary for contract formation).
- *Various Insurers v. General Electric Int'l*, 131 F.4th 1273 (11th Cir. 2025) (subrogee insurance company of non-signatory plant owner bound by arbitration agreement in Services Contract between plant operator and General Electric as plant owner was third-party beneficiary of Services Contract with authority to act unilaterally under the agreement).
- *AKM Enterprises v. Hayes*, 2025 WL 593385 (S.D. Tex.) (non-signatory may not invoke arbitration provision under direct benefits theory where it is not seeking to hold defendants' liable under the applicable agreement but only refers to the agreement as evidence in support of its independent tort claims).
- *Ballesteros v. Ford Motor Co.*, 109 Cal App.5th 1196 (2025), review filed (May 5, 2025) (non-signatory car manufacturer may not compel arbitration based on agreement with car dealership where plaintiff's claim against car manufacturer is based on warranties not referenced in agreement with dealer).
- *McDonough v. Bidwill*, 2025 WL 487171 (D. Ariz.) (non-signatory public relations firm hired by the NFL team's counsel to assist in arbitration with former employee are agents of team and therefore subject to arbitrating defamation claim).
- *The Government of the Lao People's Democratic Republic v. John K. Baldwin, Bridge Capital, LLC*, 2025 WL 990527 (D.N. Mar. I.) (court declines to confirm award against non-signatory, finding that fact-intensive alter ego claim should be raised in separate action and not addressed for the first time in motion to confirm award).
- *Miami Dolphins v. Engwiller*, 2025 WL 1064381 (Fla. App.) (daughter is obligated to arbitrate negligence claim even though it was her mother who accessed the team's account manager website which contained prominent and visible terms of use and displayed electronic tickets for Miami Dolphins game at the entry gate).
- *Meadows v. Cebridge Acquisition, LLC*, 132 F. 4th 716 (4th Cir. 2025) (later arbitration agreement governs over inconsistent prior arbitration agreement even if later agreement did not expressly state that it superseded the earlier agreement).

- *Zynga v. Mills*, 2025 WL 1198744 (Ala.) (non-signatories are bound by arbitration provision in terms of service of on-line casino gambling site based on Alabama statute allowing recovery of gambling debts on behalf of victimized family members).
- *Hu v. Barclays Capital, Inc.*, 2025 WL 1307700 (S.D.N.Y.) (highly educated corporate executive could not be "deluded by [employer's] formatting choices" where arbitration clause was obvious and unmistakable).

V. CHALLENGES TO ARBITRATOR OR FORUM

Parties to Submit to Arbitration Implication of Inconsistent Parallel Arbitration Awards. Four arbitration awards were issued by four different arbitrators involving the same issues and parties. Each award found for claimants, but the damages awarded in each case differed significantly along with other findings. The question for the Fifth Circuit was who reconciles the inconsistencies – a court or an arbitrator. The district court enjoined a subsequent arbitration filed to address what the Fifth Circuit called "the awards in their riotously varying glory", awaiting the court's ruling on these inconsistencies. The Fifth Circuit concluded that the injunction was "no longer viable to prevent the parties, if they so choose, from exercising their contractual right to engage in further arbitration" on the question of how to reconcile the inconsistent award. *Sullivan v. Feldman*, 132 F.4th 315 (5th Cir. 2025).

Insurance Appraisal Award Vacated on Evident Partiality Grounds. The insured in this case assigned her claim to her contractor. A coverage dispute ensued, and the contractor named himself as party-appointed appraiser. The insurance company objected, arguing that the contractor was not disinterested, but proceeded to appoint its appraiser and the two appraisers appointed an umpire. A final appraisal award of over $144,000 dollars was issued, and the insurance company moved to vacate the award on evident partiality grounds. The Rhode Island Supreme Court first concluded that the appraisal process constituted an arbitration subject to the Rhode Island Arbitration Act. The Court concluded that the party-appointed appraiser did not have to be disinterested. The Court found, however, that the contractor here, as the sole owner of his business, "had a direct financial interest in the award" and that in effect he "acted as its own appraiser with the entire appraisal award ultimately being payable" to him. The Court acknowledged that parties in some instances can waive the protections offered by statutes such as the Arbitration Act. "Nevertheless, there are some public policies that are so important that statutes relating to those policies should be understood to preclude the right to waive a protective statutory provision. One of those overarching public policies is the need to maintain the integrity of the alternative dispute resolution process as well as the public's appreciation of that integrity." The Court concluded that based on the facts presented and in order to preserve the integrity of the alternative dispute resolution process employed here, the appraisal

award must be vacated on evident partiality grounds. *Vermont Mutual Insurance Co. v. New England Property Services Group*, 331 A.3d 993 (R.I. 2025).

Case Shorts

- *SCPS, LLC v. Kind Law*, 2025 WL 728994 (D.D.C.) (application to enjoin AAA arbitration proceeding in certain locale ruled premature as AAA and arbitrator had not yet rendered a definitive ruling on the site of the arbitration).
- *BRE Hotels and Resorts v. Ace American Insurance Co.*, 2025 WL 662825 (D. Haw.) (court sets strict guidelines for appraisal process after insurers failed to comply with court's prior granting of motion to compel).
- *E. W. Howell Co. v. Hill Intl., Inc.*, 235 A.D.3d 423 (N.Y. App. Div. 2025) (good faith and fair dealing claim may be brought based on argument that party interfered with ADR process itself which allegedly impacted ruling against it).
- *New England Property Services Group v. Vermont Mutual Insurance Co.*, 331 A.3d 730 (R.I. 2025), as corrected (Mar. 18, 2025) (insurer appraisal process qualifies as an arbitration under Rhode Island's Arbitration Act despite the absence of requirement that appraiser be "disinterested").
- *Merritt Island Woodworks v. Space Coast Credit Union*, 2025 WL 1450492 (11th Cir.) (credit union's post-filing efforts to comply following AAA's decision not to administer arbitration due to failure to satisfy its requirements rejected as "rule to the contrary would result in gamesmanship by companies attempting to remedy in arbitration roadblock that they knowingly caused").
- *Sullivan v. Feldman*, 132 F.4th 315 (5th Cir. 2025) (non-signatory did not waive objection to claim he was subject to arbitration by intervening to enforce release arguably insulating him from liability).

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

Class Members en Masse Allowed to Opt-Out in Favor of Arbitration. A class action was certified against Google relating to its assistant-enabled devices. Counsel for 69,507 of the class members notified Google that they were opting out of the class in favor of arbitration. Google's challenge to this mass opt-out was rejected by the court. Google first argued that counsel failed to demonstrate that all of the opt-out class members made informed, individual decisions. The court rejected this argument, stating that it "sees no reason why the Arbitration Claimants may not act through their attorneys in executing those requests to opt out of the class." It added that if this was not the case, "those individuals would have a malpractice remedy." The court also rejected the claim that the opt-out notices did not precisely conform with the procedure set forth in the class notice. The court concluded that it did "not think such a technical detail should operate to defeat the Arbitration Claimants' expressed intention to exclude themselves from the Class. The Court

will accept non-conforming exclusion requests where there are sufficiently clear indicia of an intent to opt out." *In re Google Assistant Privacy Litigation*, 2025 WL 510435 (N.D. Cal.).

Class Action Waiver Enforceable Even Where Arbitration is Precluded. Plaintiff agreed to an arbitration agreement that included a class action waiver. The court concluded that plaintiff's claim was not arbitrable as the FAA's transportation exemption precluded arbitration of the claim. The question for the court was whether the class action waiver was still enforceable in the resulting court action. The court concluded that it was. The court reasoned that the class action waiver was distinct from the agreement to arbitrate. It explained that an arbitration agreement is a promise to proceed in a forum other than a court, while a class action waiver is a promise to forgo a procedural right to pursue class claims. The fact that the agreement here included a severability clause further supported the argument to enforce the class action waiver, the court added. For these reasons, the court concluded that the agreement "explicitly waives Plaintiff's procedural right to bring a class or collective action in both arbitration and in court, [and] it will prevent Plaintiff from maintaining class or collective action claims in the present action." *Porteous v. Flowers Foods, Inc.*, 766 F. Supp.3d 1093 (D. Or. 2025).

Case Shorts

- *Rodriguez v. Packers Sanitation Services Ltd.*, 109 Cal. App.5th 69 (2025), reh'g denied (March 19, 2025) (an aggrieved employee not seeking individual relief under California's PAGA statute may still pursue non-individual claims in a representative capacity on behalf of a class of similarly-situated aggrieved employees).
- *Ford v. The Silver F, Inc.*, 110 Cal. App.5th 553 (2025) (agreement barring arbitration of "representative claims" under PAGA applies to both individual and non-individual PAGA claims and consequently denial of motion to compel upheld).

VII. HEARING-RELATED ISSUES

Vacatur Based on Claim of Arbitrator Partiality and Misconduct Rejected. The arbitrator here ruled in favor of a former employee of Morgan Stanley, who moved to vacate the award on partiality and misconduct grounds. In particular, Morgan Stanley accused the arbitrator of sleeping through critical portions of the testimony and of misconduct because the arbitrator unsuccessfully sued a predecessor to Morgan Stanley 30 years before. The court acknowledged that awards may be vacated on the basis of arbitrator misconduct but rejected Morgan Stanley's claim based on the arbitrator's alleged sleeping through testimony. The court noted that Morgan Stanley only offered one self-serving affidavit in support of its claim and counsel did not object on the record to the arbitrator's alleged sleeping bouts. Similarly, the court rejected Morgan Stanley's partiality claim based on the arbitrator being a litigant, along with a dozen other plaintiffs, in a case alleging fraud committed by Shearson Lehman Brothers in 1993. The court emphasized the

Morgan Stanley, a successor to Shearson following three corporate mergers, had at best an indirect relationship with Morgan Stanley and the earlier lawsuit covered a different subject matter than the case upon which the arbitrator ruled. Moreover, the court ruled that the arbitrator's "failure to disclose his decades-old lawsuit alone is not sufficient to vacate an award." For these reasons, the court denied Morgan Stanley's motion to vacate the award. *Morgan Stanley Private Bank, N.A. v. Randall*, 2025 WL 439836 (W.D. N. Car.).

Disputed Claim Properly Submitted to Arbitration. The arbitrator ruled that although claimant prevailed, he was not entitled to over $25,000,000 in carried interest. The appellate court ruled that the issue of carried interest was not before the arbitrator but rather was raised by the arbitrator *sua sponte*. The New Jersey Supreme Court reversed, finding that the issue had been sufficiently put before the arbitrator for resolution. The court emphasized that claimant "discussed the issue of carried interest in his direct examination, his legal briefs, and the arbitration award he proposed to the arbitrator." The Court rejected the appellate court's ruling that the carried interest issue was not submitted to the arbitrator and therefor under New Jersey's Arbitration Act ordered the lower court to confirm the award in full. *Rappoport v. Pasternak*, 260 N.J. 230, reconsideration denied, 260 N.J. 356 (2025).

Case Shorts

- *Subway International v. Subway Russia Franchising Co.*, 2025 WL 1363870 (2d Cir.) (arbitrator's interpretation of evidence not subject to review by federal court where issue was submitted to arbitrator to decide and therefore claim that arbitrator exceeded her authority in interpreting evidence is rejected).
- *Telecom Business Solution v. Terra Towers Corp.*, 2025 WL 1177768 (2d Cir.) (claim of evident partiality rejected based on contention that arbitration panel consistently relied on the evidence favorable to the other side).

VIII. CHALLENGES TO AND CONFIRMATION OF AWARDS

Award Rejecting Act of God Defense Confirmed. An Illinois supplier to Starbucks failed to fully employ its union members as required by the collective bargaining agreement during the pandemic. The union prevailed at arbitration, as the arbitrator rejected the employer's Act of God defense. In doing so, the arbitrator noted that the Governor's order closing businesses was not an Act of God, but a Governor's response to a crisis. The employer moved to vacate, and the district court confirmed the award. On appeal, the Seventh Circuit affirmed the district court. In doing so, the court lambasted the employer's argument as "one lawyer's understanding" offered without having "examined dictionaries or linguistic corpus. It has relied entirely on counsel's own understanding, which differs from the arbitrator's." The court acknowledged "a novel virus may qualify as an 'Act of God,' at least until the medical profession figures out how to respond." It pointed out that Illinois

decided to disallow indoor dining at that time which impacted the union. "COVID-19 kicked off the chain of causation that was not the sole factor in the employees' loss of work." In fact, the court noted that the loss of employment opportunities was the government reaction to COVID rather than COVID itself. "Instead of contending that the virus plus people's individual responses would've cut workers' hours, the employer elected to base its argument on the effect of the Governor's orders." The court emphasized that the employer's characterization of a government ruling as an Act of God "is hardly a common understanding: it would make every Act of Congress an Act of God, considerably elevating the legislature's stature." The court expressed its continuing frustration that litigants seek to challenge an arbitrator's interpretation where that is not a basis to vacate an arbitration award which imposes unnecessary costs on parties and the court. The court ordered appellant to show cause why sanctions should not be awarded. *Quality Custom Distribution Services v. International Brotherhood of Teamsters*, 131 F.4th 597 (7th Cir. 2024).

Arbitration Panel Did Not Exceed Authority in Issuing Award. Trinity Energy and Southeast Drilling were parties to a subcontract for the construction of natural gas pipelines. After a dispute arose over the liability for the "stand-by costs" incurred during construction, the parties agreed to arbitration. A panel of three arbitrators concluded that Southeast Drilling was entitled to stand-by costs in the amount of $1,662,000 from Trinity Energy. Trinity Energy sought vacatur from a Texas district court, arguing that "the arbitration panel exceeded its authority" in issuing the award. The district court denied Trinity Energy's motion and subsequently granted Southeast Drilling's motion to confirm the Award. Trinity Energy appealed to the Fifth Circuit, maintaining its challenge that the arbitration panel exceeded its authority and acted in manifest disregard of the law by "fail[ing] to harmonize numerous subcontract provisions limiting Trinity's obligation to pay Southeast's standby costs." The Fifth Circuit found that Trinity Energy failed to show that the arbitration panel exceeded its powers by disregarding the contract. In doing so, the court noted that the Supreme Court has cautioned that a party seeking vacatur on exceeding authority grounds "bears a heavy burden" and that merely "convincing a court of an arbitrator's error—even his grave error—is not enough. . .. Instead, an arbitral decision even arguably construing or applying the contract must stand, regardless of a court's view of its (de)merits." Here, "the record shows the arbitration panel decided the matters based on the briefing provided by the parties and oral argument." Indeed, "not only did the [arbitration] panel refer to the subcontract and direct-pay agreement at issue, but the panel devoted pages of its final award to the recitation of its terms and analysis of its text." The Fifth Circuit concluded that "vacatur is therefore unjustified" and the district court judgment confirming the Award was affirmed. *United States Trinity Energy Svcs. v. Southeast Directional Drilling*, LLC, 135 F.4th 303 (5th Cir. 2025).

Award Granting Attorney's Fees Upheld. Preferred Wireless sought to vacate a final award of nearly $3 million in attorneys' fees and costs issued in favor of T-Mobile and Sprint Solutions ("Defendants"), claiming that the Arbitrator exceeded his powers by departing from the contractual terms. The relevant provision of the agreement at issue provided that "the prevailing party shall be entitled to recover its reasonable attorney's fees and costs." The agreement allowed the defendant to extend a "written offer of settlement for a sum certain, incorporating all claims and counterclaims asserted in the arbitration." If rejected, the matter would proceed to arbitration and "the arbitrator awards the plaintiff an amount equal to or less than the settlement amount offered by the defendant, the defendant shall be deemed the prevailing party." Preferred Wireless argued that a party seeking an award for attorneys' fees and costs must both be the prevailing party and obtain some monetary relief. The court disagreed, however, finding that Preferred Wireless's interpretation would "create an absurd result" because defendants were only defending against a lawsuit and were not seeking monetary relief. "The language of the [agreement] only requires one party to be seeking monetary relief. Preferred Wireless's arguments to the contrary are inconsistent with the most logical interpretation of the contractual language." Here, when issuing the award, the "Arbitrator explained that Defendants complied with [the agreement] because they made a timely offer to settle the case and Preferred Wireless rejected [that] offer. Since Defendants obtained favorable rulings on Preferred Wireless's claims, the Arbitrator found that Defendants were the prevailing party and entitled to an award of attorneys' fees and costs." Noting that the "Arbitrator's interpretation of the parties' agreement is entitled to deference and subject to the narrowest form of judicial review," the court concluded that Preferred Wireless failed to show that the Arbitrator disregarded the language of the agreement and therefore failed to demonstrate that the Arbitrator exceeded his authority or acted in manifest disregard of the law when issuing the Award. *Preferred Wireless LLC v. T-Mobile USA, Inc.*, 2025 WL 1311272 (S.D. Ohio).

Case Shorts

- *Morgan Stanley Private Bank, N.A. v. Randall*, 2025 WL 439836 (W.D. N. Car.) (arbitrator found not to have exceeded his authority, but rather just to have applied existing law, in awarding punitive damage to successful claimants).
- *Dilorenzo v. J. Crew Group, LLC*, 2025 WL 753948 (S.D.N.Y.) (plaintiff failed to establish that the arbitrator manifestly disregarded the law but rather evidenced a mere disagreement with the arbitrator's application of the law to the facts of her case).
- *Eletson Holdings v. Levona Holdings*, 2025 WL 1369430 (S.D.N.Y.) (non-party intervenors who received substantial benefits and relief from arbitration award did not have standing to seek confirmation of the award but did have standing to oppose vacatur to protect their cognizable interest in the award).

- *Andriesz v. BGC Financial*, 2025 WL 1184097 (S.D.N.Y.) (manifest disregard claim rejected even though FINRA panel awarded $500,000 in compensatory damages but no damages on a specific claim as there is no requirement that award of damages correspond to any claimed amount, particularly where amount awarded is below amount requested).

IX. ADR – GENERAL

Court Rejects Arbitration Awards as Persuasive Authority. Plaintiffs submitted under seal 15 arbitration awards in related cases in opposing defendant Twitter's motion to dismiss. Twitter moved to strike the documents, noting that arbitration proceedings are confidential as are the awards. The court granted Twitter's motion and excluded the arbitration awards. In doing so, the court pointed out that as plaintiffs acknowledged "administrative authorities are not controlling on this Court, and while we *may* permit citations to administrative authorities, we are not required to." The court added that a motion to dismiss "is not occasion for a popularity contest in which the Court may be persuaded by the number of arbitration awards decided in either party's favor." The court cited the Second Circuit's holding that the interest in the confidentiality of arbitration proceedings generally outweighs the presumption of access to judicial documents. The court acknowledged that if it had ruled that the awards were relevant, the common law right to access would apply. However, the court concluded that it would not "review the arbitration awards [finding] that they are neither relevant nor persuasive authority." *Cornet v. Twitter, Inc.*, 2025 WL 1158350 (D. Del.).

Sanctions Awarded for Frivolous Challenge to Motion to Confirm. The arbitrator issued an award against attorney Catanzarite's client. Catanzarite opposed the resulting motion to confirm. The trial court confirmed the award and imposed a $37,000 sanction against Catanzarite for filing and refusing to withdraw his frivolous and factually unsupported opposition. Catanzarite appealed, and the appeals court not only affirmed but imposed additional sanctions for counsel's filing another frivolous appeal. The appeals court noted that Catanzarite acknowledged that the arbitrator admitted nearly all of the documents and testimony offered, but argued without support that this was a pretext "to allow the arbitrator to disguise his willful refusal to hear dispositive evidence, or that the arbitrator had otherwise exceeded his powers." The court cited Catanzarite's reliance on a court decision which "he knew had been explicitly disapproved by our Supreme Court, on the very point he cites no less." In response to Catanzarite's contention that he was entitled to challenge the motion to confirm, the court observed that the "right to file a document should not be confused with an obligation do so. Catanzarite is not faced here with sanctions because he filed a response; it was the substance of the response that is the problem." The court noted that even if the arbitrator had given the weight to Catanzarite's evidence as he argued, it might suggest at best arbitrator error but not misconduct

sufficient to reject the award. The court concluded that Catanzarite "repeats the assertions he made in the court below", and consequently "this appeal lacks any semblance of merit." For these reasons, the court upheld the trial court's sanctions award and remanded the matter to the trial court for the award of further sanctions against Catanzarite for his frivolous appeal." *Plantations at Heywood 1, LLC v. Plantations at Haywood, LLC*, 108 Cal. App.5th 803 (2025). See also *Telecom Business Solution v. Terra Towers Corp.*, 2025 WL 1177768 (2d Cir.) (AAA Commercial Rules empower arbitration panel to impose sanctions and therefore panel did not exceed its authority in awarding sanctions).

Case Shorts

- *New England Property Services Group v. NGM Insurance Co.*, 321 A. 3d 889 (R.I.) (insurance appraisal process akin to arbitration and therefore judicial review of appraisal awards is limited).
- *Merritt Island Woodworks v. Space Coast Credit Union*, 2025 WL 1450492 (11th Cir.) (motion to compel denied where AAA declined to administer arbitration due to credit union's failure to submit consumer plan for review or pay requisite fees).
- *Cornet v. Twitter, Inc.*, 2025 WL 1158350 (D. Del.) (arbitration awards filed under seal are not judicial records subject to public review where the court has ruled that the awards are irrelevant and are to be stricken from the record).

X. COLLECTIVE BARGAINING SETTING

Labor Arbitrator Exceeded His Authority by Ruling on Issue Not Submitted. The union here challenged management's reassignment by a petroleum refinery of certain responsibilities from hourly workers to salaried workers. The arbitrator ruled in favor of the refinery, but then in addition ruled that the salaried employees should be included in the bargaining unit, an issue not submitted for resolution. The district court vacated the award, and the Tenth Circuit affirmed. The majority rejected the dissenter's contention that the court should defer to the arbitrator's own assessment of the scope of his authority. The majority emphasized that the parties submitted only one substantive issue for resolution, and that "issue did not require the arbitrator to determine whether [the salaried employees] were members of the bargaining unit." The majority concluded, in vacating the award, that "because the parties' submission of the issue was clear, we owe no deference to the arbitrator's interpretation of the scope of the issues presented for arbitration . . . the district court thus acted within its authority to review and vacate the arbitrator's decision regarding the unsubmitted issue of whether [the salaried employees] should be included in the bargaining unit." *HollyFrontier Cheyenne Refining v. United Steel*, 132 F.4th 1184 (10th Cir. 2025).

Case Shorts

- *Los Angeles College Faculty Guild v. Los Angeles Community College District*, 2025 WL 1279080 (Cal. App.) (California's Educational Law expressly limits the scope of union representation of public school employees which prevented the arbitration of grievances here relating to safety-related construction projects and a teaching position eliminated when funding was lost).

XI. DEVELOPMENTS

FMCS Staff Dramatically Reduced. The Trump administration has severely cut the Federal Mediation and Conciliation Service staff from approximately 200 employees to about a dozen remaining employees. The reduction was effectuated by placing most employees on administrative leave. This, along with other steps taken by the Trump administration, is viewed as a systemic effort to eliminate most federal public sector collective bargaining.

Chartered Institute Issues AI Guidelines. The Chartered Institute of Arbitrators published Guidelines on the Use of AI in Arbitration. The Guidelines encourage arbitrators to: address the use of AI early in the proceedings and record a decision in that regard; appoint AI experts to understand AI and its consequences; require disclosure of AI use; address the use of AI in the award if necessary, and; take into account in the costs awarded any failure by the parties to comply with the tribunal's directions regarding AI. The Guidelines further provide that if "arbitrators consider the use (or non-use) of AI by [a party] jeopardizes the integrity of the arbitral proceedings, arbitrators may make a ruling on the use of AI on their own motion after consulting the parties."

California Law Impacts Consumer Arbitration. Under a new California law, consumers who are required to arbitrate disputes have been afforded additional protection. For example, discovery and depositions (at the arbitrator's discretion) are permitted as well as the option of having claims heard in small claims court instead (in certain circumstances). The new law also prohibits consumer arbitration for controversies arising in California to be venued outside of the state or the application of any other law other than California law to claims arising in the state.

UK Arbitration Act of 2025 Enacted. Arbitration law in the UK has been modified in notable ways by the UK Arbitration Act of 2025. The new law, among other things: confirms that arbitrators can issue summary disposition awards; strengthens arbitrator immunity; empowers emergency arbitrators to issue peremptory awards, and; codifies that arbitrators have a duty to disclose circumstances that might give justifiable doubts regarding their impartiality.

Anchoring Bias Found in Cutting and Pasting Award. A Singapore court vacated an arbitration award where the arbitrator incorporated an "extensive" number of passages from separate related awards in which the arbitrator sat. The court characterized this as

anchoring bias on the part of the arbitrator. "In our judgment, on the facts before us, the extent to which the award drew from the parallel awards was such that the informed and fair-minded observer would reasonably apprehend that the award was prepared by a tribunal that did not keep an open mind because it was impermissibly influenced by the parallel awards that had been rendered earlier."

XII. TABLE OF CASES

Cases