FELIU NEUTRAL SERVICES LLC

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

Feliu Case Summaries:

June 2026

Contents

I. JURISDICTIONAL ISSUES: GENERAL

Federal Court Maintains Jurisdiction Following Stay. The Supreme Court in *Badgerow v. Walters* ruled that federal jurisdiction to rule on a motion to vacate or confirm may not be conferred by "looking-through" the motion to the underlying substantive controversy. But does a federal court have jurisdiction to rule on a motion to vacate or confirm an award because of its earlier ruling on a motion to compel arbitration? A unanimous Supreme Court ruled that the district court retains its pre-existing jurisdiction once it compels arbitration and stays the federal proceeding so as to rule on a post-award motion. The Court pointed out that under the FAA a federal court may assess its jurisdiction by "looking at the suit that is already before it" without having to look through the pleadings. The Court reasoned that "nothing in the FAA eliminated that jurisdiction while the parties arbitrated." The district court's authority to rule on post-award motions is in fact based on its jurisdiction to rule on the original claims themselves. The Court also looked to its decision in *Smith v. Spizzirri,* which held that a stay of the federal action is required when a case is referred to arbitration. "The FAA requires a stay, rather than dismissal, so that a court that has granted a Section 3 stay can superintend the arbitration to the end, including through confirmation or vacatur." The Court rejected public policy and efficiency arguments offered in opposition to its holding, noting that there is no evidence that parties filed frivolous motions to compel solely to preserve federal-court jurisdiction. In contrast, the Court pointed out that efficiency is, in fact, achieved by avoiding dual-track litigation, noting that motions to compel in federal court can be appealed only post-award. In the absence of federal court jurisdiction, the case post-award would have to be heard in state court. That efficiency was present in this case, the Court noted, as "the same District Court that initially ruled on [appellant's] claims to be arbitrable later confirmed the resulting award and entered judgment; then, both the arbitrability and confirmation issues went up to the Second Circuit together." For these reasons, the Court concluded that a "federal court with the jurisdiction to stay claims pending arbitration under Section 3 of the FAA has the same jurisdiction to resolve motions to confirm or vacate a resulting arbitration award." *Jules v. Andre Balazs Properties*, 146 S. Ct. 1209 (2026).

FAA Transportation Worker Exemption Applies to Last-Mile Drivers. Are drivers who deliver goods within a state that have traveled interstate engaged in Interstate commerce for purposes of the FAA and its transportation worker exemption? A unanimous Supreme Court answered in the affirmative. The drivers picked up baked goods from a warehouse and delivered them to local stores, never leaving the state. The drivers filed a wage-and-hour class action against Flower Foods, alleging they were independent contractors. Flower moved to compel arbitration. The district court and the Tenth Circuit denied Flower's motion, ruling that the drivers were exempt from arbitration under the FAA because they were engaged in commerce. In affirming the Tenth Circuit, Justice Gorsuch, on behalf of a unanimous Court, focused on the definition of "engage", finding no requirement that an individual cross a state line to be "engaged" in commerce. In doing so, the Court looked to

case law under the Commerce Clause, reasoning that "individuals can sometimes be direct, necessary, and active participants in moving goods 'from . . . points in one state' to 'points in another state' without crossing state lines or interacting with vehicles that do." For these reasons, the Court concluded that the drivers qualified under the FAA as transportation workers and were therefore not required to arbitrate their dispute. *Flower Foods, Inc. v Brock*, 2026 WL 1485669 (U.S.). Cf. *Vela v. Harbor Rail Services of California*, 120 Cal. App.5th 353 (2026) (FAA transportation worker exemption did not apply to rail car repairman of out-of-service rail cars as employees' work was not directly engaged in interstate commerce); *Igwenagu v. Bimbo Bakeries USA*, 2026 WL 1039810 (D. Mass.), report and recommendation adopted 2025 WL 4687848 (D. Mass.) (last-mile drivers subject to distribution agreements who pick up baked goods from a warehouse and then resell them are covered by FAA transportation exemption and are not required to arbitrate their wage and hour dispute).

FAA Transportation Exemption Applied to Drivers Who Own Business. Schmidt Baking Company required Silva and Rothkugel, who were employed as W-2 drivers by a staffing agency providing services to Schmidt, to form corporate entities and enter into distribution agreements with it. Silva and Rothkugel did so and then brought a wage-and-hour class action against Schmidt, which moved to compel arbitration pursuant to the distribution agreements. The district court granted the motion, but the Second Circuit reversed, finding that the FAA's transportation exemption barred arbitration of these claims. The court acknowledged that, as business owners, Silva and Rothkugel were not identified as workers in the traditional sense and the distribution agreements were not contracts of employment, as required by the transportation exemption. However, the court, in interpreting the statutory language, explained that Congress intended the exemption to apply to any agreement involving the performance of work by workers and that "contracts creating independent contractor relationships fall within the scope of the exception." The court emphasized that the distribution agreement here "was signed by an individual worker on behalf of an entity that he formed at the direction of the employer." The court did not find the fact that the agreement here was with a business to be disqualifying. Congress's concern in establishing the exemption, in the court's view, was "not conditioned on whether the contractual party is an individual worker or their corporate personality but instead on whether the contract is one under which a transportation worker provides services." Looking at the "substance of an agreement, and not its formalities", the court concluded that the FAA's transportation exemption applied to Silva and Rothkugel. The court reasoned that an unacceptable loophole in the transportation exemption could be created if an employer were simply to designate a contract of employment as an independent-contractor arrangement. The court, in support of its conclusion that the transportation exemption applied, pointed to the fact that Silva and Rothkugel were required to provide personal guarantees relating to the performance of their work and that they had previously performed the same delivery services before being required to enter into the distribution

agreements. "The record on appeal unequivocably demonstrates that [Silva's and Rothkugel's corporate entities] are mere instrumentalities created at Schmidt's behest to dress individual 'contracts of employment' in the garb of commercial transactions." For these reasons, Schmidt's motion to compel was denied. *Silva v. Schmidt Baking Distribution,* 162 F.4th 354 (2d Cir. 2025), cert. denied, 2026 WL 1377157 (U.S.).

Foreign Sovereign Immunity Act Arbitration Exception Applied. Plaintiffs Ukrainian power and gas companies obtained arbitration awards in their favor against Russia for damages resulting from Russia's seizure of their Crimean businesses. The plaintiffs sought to enforce those awards in the United States under an investment treaty between Russia and Ukraine. The district court rejected Russia's jurisdictional challenge, holding that the arbitration exception to the FSIA applied. The D. C. Circuit affirmed. The court explained that jurisdiction lies under the arbitration exception when an arbitration agreement exists, an award has been issued, and a treaty may govern the enforcement of the award. The court found that all three were present here. In particular, the court held that the jurisdictional inquiry ends where the tribunal "concluded that the Investment Treaty supplied jurisdiction and held Russia liable for breaching it." The court rejected Russia's various challenges, finding that they went to the scope of the arbitration agreement as well as the merits, "dressed up as a challenge to the court's jurisdiction to hear the case." Having found that the arbitration exception applies, the court ruled that the district court had jurisdiction and remanded the case for further proceedings. *Stabil, LLC v. Russian Federation*, 167 F.4th 506 (D.C. Cir. 2026).

Non-Mutual, Offensive Affirmative Collateral Estoppel Not Appropriate Under FAA. A wage and hour putative class action and collective action was brought against defendant nursing agency. The four named plaintiffs signed arbitration agreements with delegation clauses. Each was required to arbitrate the question regarding the validity of the arbitration agreements. Two arbitrators ruled the agreements valid, and two found them invalid based on unconscionable fee and venue provisions. Three of the four awards were confirmed, and 255 additional employees opted-into the FLSA action. The district court applied the doctrine of non-mutual, offensive collateral estoppel, which applies when a plaintiff seeks to preclude a defendant from relitigating an issue the defendant previously litigated unsuccessfully in another action against a different party. In doing so, the court adopted the two awards that invalidated the arbitration agreements and precluded their enforcement for the 255 opt-ins. The Ninth Circuit reversed, holding that "the FAA does not permit the application of non-mutual offensive collateral estoppel that would result in the effective invalidation of arbitration agreements." The court characterized the district court's actions as transforming "the parties' individualized proceedings into a bellwether-type class action proceeding to which the parties never agreed." The court emphasized the importance of consent in enforcing arbitration agreements. The result was the foreclosure

of hundreds of arbitration agreements, according to the court, based solely on two arbitration awards. "Precluding an arbitration that the parties had agreed to – because a *different* arbitrator in a *different* proceeding had concluded that an agreement between *different* parties was unconscionable – would render the parties' consent meaningless." In contrast, the court pointed out that, unlike in class actions, where the named plaintiffs have a duty to adequately represent the class, the district court's order bound absent opt-ins without the procedural safeguards they would have been afforded as a class member. For these reasons, the case was remanded to the district court for additional proceedings consistent with the Ninth Circuit's ruling. *O'Dell v. AYA Healthcare Services*, 171 F.4th 1173 (9th Cir. 2026).

Not All Gender-Based Discrimination Claims Trigger EFAA Protection. A former employee, "one of only two Black women on her team," sued Morgan Stanley, alleging that she was treated differently from her white, male colleagues. Her first supervisor, a man, allegedly assigned more complex work to men who were junior to her and "spoke to her in a condescending and hostile tone." Another supervisor subjected her to "microaggressions" and denied her the same opportunities as other employees. Morgan Stanley moved to compel arbitration under the parties' arbitration agreement, arguing that the employee's gender-based discrimination claims were not protected by the Ending Forced Arbitration Act of 2021 ("EFAA"). The question for the court was whether the employee alleged a "sexual harassment dispute" under New York City Human Rights Law, "the most lenient applicable liability standard" of the statutes she relied on. In resolving this question, the court cited its earlier ruling in *Owens v. PriceWaterHouseCoopers LLC*, 786 F. Supp. 3d 831 (S.D.N.Y. 2025), where "[it] was required to define the meaning of conduct constituting sexual harassment for purposes of the EFAA when a plaintiff asserted claims under the NYCHRL." The court defined such conduct as "unwelcome verbal or physical behavior based on a person's gender, regardless of whether that behavior is lewd or sexual in nature" but emphasized that the standard was "a higher bar than simply alleging that a plaintiff was treated less well than other employees because of gender." Applying that standard to the allegations here, the court found that the employee "alleges, at most, that she was treated less well than other employees because of gender, which does not rise to the level of conduct constituting sexual harassment." As a result, the court concluded that "none of [the employee's] claims fall under the FAA's protections, [and] her claims are subject to mandatory arbitration pursuant to the terms of the Arbitration Agreement." *Waiguchu v Morgan Stanley*, 2026 WL 892069 (S.D.N.Y.). See also *Shaw v. Salesforce*, 2026, WL 787990 (D. Colo.) (Ending Forced Arbitration Act did not apply to claim of hostile work environment where plaintiff failed to allege that the harassment was based on sex and therefore motion to compel arbitration granted); *Hansbrough v. Marshall Dennehey*, 2026 WL 539397 (Ohio App.) (claim of same-sex harassment was sufficiently pled under Ohio law to fall within the

bounds of the Ending Forced Arbitration Act and therefore motion to compel arbitration denied).

EFAA Encompasses Entire Case. In a matter of first impression, the Sixth Circuit held that when a plaintiff asserts multiple claims, including a claim for sexual harassment or assault, in a single lawsuit, the Ending Forced Arbitration Act requires that the entire case, not just the individual sexual assault and/or harassment claims, must be heard in court and not in arbitration. The court's determination was based on a careful statutory interpretation of the Act, focusing on the key provision of the EFAA, which states that "no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." Noting that a court "must presume that Congress says in a statute what it means and means in a statute what it says," the court found that "the operative word here is 'case'". Here, the court concluded that Congress deliberately used of the word "case" rather than "claims" or "causes of action." Accordingly, the EFAA "encompass[ ] a plaintiff's entire suit" and "renders the arbitration agreement unenforceable with respect to each of the claims that comprise [the] case," not just the claims sounding in sexual assault or sexual harassment. *Bruce v. Adams and Reese, LLP*, 168 F.4th 367 (6th Cir. 2026).

Case Shorts

- *Sociedad Con Cesion Aria Metropolitan de Salud v. Webuild S.P.A.*, 2026 WL 1379702 (3d Cir.) (court has jurisdiction to enforce and collect debt based on foreign arbitral award without requiring minimum contacts to the jurisdiction).
- *Eastern Steel Constructors, Inc. v. International Fidelity Insurance Co.*, 351 A.3d 766 (Pa. 2026), reconsideration and reargument denied (April 10, 2026) (arbitration award is conclusive and binding against surety in construction dispute where surety had every opportunity to defend itself in arbitration but chose not to do so).
- *Adserballe & Knudsen v. Facilities Development Corp.*, 2026 WL 973061 (4th Cir.) (New York Convention's public policy exception not violated where arbitrators applied Danish contract law, instead of U.S. law, for work subcontracted out to a Danish company for work performed in Denmark).
- *Geneva Enterprises v. Chavez*, 173 F.4th 64 (4th Cir. 2026) (appellate jurisdiction lacking where district court's ruling constituted refusal to lift its previously issued stay pending outcome of the arbitration under Section 16 of the FAA rather than a refusal to compel arbitration under Section 4 of the FAA).
- *Palantir Technologies v. Jain*, 2026 WL 1295834 (S.D.N.Y.) (court action seeking only injunctive relief not barred by provision in enforceable arbitration agreement, which merely confirms that party can seek injunctive relief in aid of arbitration, an extant legal right available to all litigants).

- *Chemaly v. Lampert*, 174 F.4th 843 (11th Cir. 2026) (FAA exemption for seamen does not apply to New York Convention and claims brought by seaman injured while working on yacht are subject to arbitration).
- *Freedman Normand Friedland, LLP v. Axos Nevada, LLC*, 2026 WL 396818 (N.Y. Sup. Ct.) (law firm acting as an insurance company's claim handler is not a party to the dispute in arbitration between insurer and insureds and lacks standing to seek a stay of arbitration).
- *Richards v. Silver*, 2026 WL 1014006 (Fla. App.) (arbitration provision in settlement agreement resulting from a successful mediation ruled enforceable and not subject to EFAA as the arbitration is not the result of a pre-dispute agreement).
- *Espin v. Citibank*, 2026, WL 801194 (E.D. N.C.) (the Military Lending Act, which bars arbitration of disputes involving active military personnel and financial lending institutions, did not apply to claims involving disputes that arose from accounts opened before enactment of the amendment to the statute in 2017).
- *Miller v. Miller*, 588 P.3d 742 (Idaho 2026), reh'g denied (May 14, 2026) (parties can agree to submit divorce proceedings to arbitration under Idaho law).
- *Florea v. The Cornwell Quality Tools Co.*, 2026 WL 1182813 (C.D. Cal.) (preliminary injunction issued where irreparable injury found based on court's determination that plaintiffs likely will be found not to be bound by arbitration agreement).
- *Ashley v. Clay County*, 2026 WL 860111 (N.D. Tex.) (court, not arbitrator, must decide contract formation question as to whether party agreed to arbitrate the dispute).

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

Delegation of Constitutional Claim to Arbitrator Lawful. An Amtrak train using the tracks of BNSF Railway Company derailed in Missouri in 2020. Claims were brought by injured passengers and the heirs of those who were killed against both BNSF and Amtrak. Among the claims brought were constitutional claims asserting that Amtrak's arbitration agreement denied the passengers their constitutional right of access to the courts and impinged on their constitutional right to travel. BNSF moved to compel arbitration under Amtrak's arbitration agreement that the passengers had entered into when purchasing their tickets. The court ruled that the arbitration agreement, which had a broad delegation provision, was enforceable. The court explained that the passengers' claims concerned the validity and enforceability of the arbitration agreement itself. As the parties' agreement included a valid delegation provision, the court concluded that it was for the arbitrator, not the court, to determine the agreement's enforceability. In doing so, the court rejected the passengers' claim that constitutional issues could not be heard by an arbitrator. The court noted that no decision had been cited by the parties that held that arbitrators were barred from ruling on constitutional issues. As the "parties agreed that an arbitrator would decide issues of whether the Arbitration Agreement is valid and enforceable, which includes

whether it is valid and enforceable under the United States Constitution", the court held that it must enforce the terms of the agreement and compel arbitration of the claims brought by the parties. *BNSF Railway Co. v. Magin*, 2026 WL 828795 (E.D. Mo.).

Waiver of Right to Arbitrate. Equifax revised its Online Universal Membership Agreement to include an arbitration provision two months after two lending companies filed an antitrust class action against the company. The complaint alleged that Equifax maintains a monopoly over the United States market for electronic verification of income and employment services and has used that monopoly power to charge "supracompetitive prices" for its products and services. After Equifax revised its Agreement, and while the parties continued to litigate the matter in court, both plaintiffs ordered additional online services from Equifax. The Eastern District of Pennsylvania court found that, in doing so, both plaintiffs "accepted the updated Membership Agreement's terms" by clicking the "Agree & Continue" button when processing their orders. The issue to resolve, however, was whether Equifax waived its right to compel arbitration. The court applied the Third Circuit's framework from *Valli v. Avis Budget Group Inc,* 162 F.4th 396 (2025), which requires defendants to provide "clear, reasonably prompt record notice" of their intent to arbitrate when they know a claim "could be arbitrable." The court found that during the eleven months between the effective date of the revised Membership Agreement and Equifax's motion to compel, Equifax participated in oral arguments, engaged in discovery, produced over 94,000 documents, and filed joint discovery plans without any mention of arbitration. This conduct, the court held, demonstrated "a preference for litigation over arbitration" and constituted waiver under federal law. *Greystone Mortgage, Inc. v. Equifax Workforce Solutions LLC*, 820 F. Supp.3d 353 (E.D. Pa. 2026). See also *Trustees of International Union of Bricklayers v. Elevance, Inc.*, 2026 WL 788179 (D. Conn.) (insurer waived right to arbitrate where the record revealed it had knowledge of dispute resolution procedures before the complaint was filed yet waited two years before filing a motion to compel); *Lennar Communities Nevada v. Whalen*, 2026 WL 1028371 (Nev.) (party waived arbitration where it litigated for 17 months without invoking right to arbitrate and thereby obtained discovery unavailable in arbitration); *Cole v. Arbor Court Healthcare, LLC*, 2026 WL 1260951 (Iowa) (nursing facility waived its contractual right to arbitrate in defending litigation by serving extensive discovery and waiting seven months before moving to compel arbitration).

Case Shorts

- *Sandler v. Modernizing Medicine*, 170 F.4th 1209 (9th Cir. 2026) (incorporation of JAMS rules constitutes clear and unambiguous delegation of questions of the arbitration contract's validity to the arbitrator).
- *Wright v. WellQuest Elk Grove, LLC*, 119 Cal. App.5th 267 (2026) (reference to submitting disputes to JAMS to administer without identification of what rules

govern found to be insufficient to constitute clear and unmistakable delegation of gateway issues to arbitrator).

- *Beckett v. Bitcoin Depot, Inc.*, 2026 WL 541105 (S.D. Ind.) (incorporation of AAA's Commercial Arbitration Rules constitutes clear and unmistakable delegation of unconscionability issue to arbitration, particularly where plaintiff is a 66-year-old lifelong professional).
- *Wright v. WellQuest Elk Grove, LLC*, 119 Cal. App.5th 267 (2026) (arbitration provision authorizing an arbitrator to "decide whether a claim or dispute must be arbitrated" did not constitute clear and unmistakable authority for arbitrator to rule on arbitrability issues including unconscionability).
- *Martin v. Binance Holdings*, 2026 WL 739476 (S.D. Fla.) (unconscionability, illegality, and effective vindication arguments addressed the parameters of the arbitration rather than whether the arbitration can actually take place and therefore are for the arbitrator to address where there is a valid delegation provision).
- *Hill v. Jackson Offshore Holdings*, 175 F.4th 324 (5th Cir. 2026) (gateway questions for arbitrator to decide where valid delegation provision is present and challenge is to the arbitration agreement as a whole and not the delegation provision specifically).
- *Metafi Pro Limited v. NY Trading*, 2026 WL 1074373 (N.D.N.Y.) (court, not arbitrator, decides which arbitration provision governs where conflicting arbitration clauses are present, even where one contains an enforceable delegation provision).
- *Jackson v. Stevenson*, 2026 WL 1390716 (Ga.) (issue as to who should decide the arbitrability question relating to non-signatories is for the court and not for the arbitrator to decide, even where there is an otherwise valid delegation clause, as the non-signatories did not agree to delegate such issues to the arbitrator).

III. JURISDICTIONAL ISSUES: UNCONSCIONABILITY

Agreement Not Unconscionable. A California employee signed an arbitration agreement at the inception of employment that mandated arbitration "of all claims, disputes, and/or controversies (collectively 'claims'), whether or not arising out of [employee]'s employment or the termination of employment, that Company may have against [employee] or that [employee] may have against Company or against its employees or agents in their capacity as employees or agents." The employee sued her employer, and the employer moved to compel arbitration of her claims. She argued in response that these terms bound her to any claim, at any time, that she may have against her employer, even years after her employment ended. The court disagreed, finding that "the agreement should be read in context as only applying to employment related claims." From that starting point, the court concluded that the agreement was not overbroad or indefinite. The court also found no lack of mutuality. Noting that "lack of mutuality generally consists of the stronger party imposing terms on the weaker party without accepting those terms itself," the court

observed that the agreement here "applies equally to employee and employer-initiated claims." For instance, the agreement provided an "illustrative list of possible arbitrable claims" but specified that the universe of possible arbitrable claims "are not limited to" the list. Moreover, the court found a justifiable basis for the three types of claims excluded by the agreement: workers' compensation and unemployment claims "are excluded from arbitration by law," and the exclusion of claims seeking injunctive relief applied equally to the parties. As such, the court concluded that the agreement contains "the modicum of bilaterality required by law" and held that the trial court did not err in holding it was not substantively unconscionable. *Ayala-Ventura v Superior Court of Fresno County*, 2119 Cal. App.5th 241 (2026). But see *Stoker v. Blue Origin, LLC*, 120 Cal. App.5th 91 (2026) (arbitration provision in employment agreement found to be substantively unconscionable where it applied to all claims against the employer and not merely employment-based claims).

Case Shorts

- *Beckett v. Bitcoin Depot, Inc.*, 2026 WL 541105 (S.D. Ind.) (issue of unconscionability for arbitrator to decide where challenge is to the agreement as a whole rather than directed specifically to the arbitration provision).
- *Stoker v. Blue Origin, LLC*, 120 Cal. App.5th 91 (2026) (severance of unconscionable terms not warranted where multiple unconscionable terms are present and court would be required to rewrite or reform agreement with terms not negotiated).

IV. CHALLENGES RELATING TO AGREEMENT TO ARBITRATE

Nonsignatory Not Bound By Estoppel Theories. For several years, Abdulkadir Abdisalam provided courier services for Strategic Delivery Solutions, LLC ("SDS"), a healthcare delivery company. He eventually filed a putative class action alleging that SDS misclassified its couriers as independent contractors and failed to pay them the wages they were owed, all in violation of Massachusetts law. SDS moved to compel arbitration of Abdisalam's claims, relying on an arbitration provision in an agreement between it and Abdul Courier, LLC, a corporation that SDS required Abdisalam to form in order to provide it with courier services (the "Vendor Agreement"). The district court determined that Abdisalam was not a signatory to the Vendor Agreement and, therefore, was not bound by its arbitration provision as a matter of contract law or under principles of equitable estoppel. The First Circuit affirmed. Having found that Abdisalam did not qualify as a signatory to the Vendor Agreement, the court turned to SDS's three alternative theories of estoppel: (1) direct benefits; (2) intertwined claims; and (3) successor-in-interest, but found none of them to be persuasive. SDS's direct benefits theory was premised on its assertions that Abdisalam reaped benefits from the Vendor Agreement, including the ability to accept packages for delivery from SDS, to operate under SDS's federal motor authority, and to procure discounted insurance. The court disagreed, finding that any benefit Abdisalam received

from the Vendor Agreement was, "at best, indirect. That is, the benefit flowed from Abdul Courier, LLC's relationship with SDS, which permitted Abdisalam to act as a courier for the company, not from the Vendor Agreement itself." Turning to SDS's "intertwined claims" theory, the court observed that this theory is primarily used "to allow a nonsignatory to compel a signatory to arbitrate" and noted that it found no authority applying this form of estoppel permitting a signatory to compel a nonsignatory to arbitrate. The court, therefore, "decline[d] SDS's invitation" to do so here, particularly since SDS had not provided "any persuasive justification." Finally, SDS's successor in interest theory was rejected, with the court noting that "to the extent Massachusetts courts have applied the theory, they have done so primarily when one business entity has reorganized into another to avoid paying its debts." While here, Abdul Courier was dissolved involuntarily at the end of 2023, and Abdisalam continued to deliver for SDS through October 2024. Based on these facts, the court determined that Abdisalam's "performance, without more, does not render him a successor in interest to Abdul Courier, LLC under Massachusetts law." For these reasons, the district court's order denying SDS's motion to compel arbitration was affirmed. *Abdisalam v. Strategic Delivery Solutions, LLC*, 171 F.4th 30 (1st Cir. 2026). See also *Toothman v. Redwood Toxicology Laboratory*, 120 Cal. App.5th 412 (2026) (non-signatory client of temporary employment agency not encompassed under agency's arbitration agreement on third-party beneficiary grounds); *Sessoms v. USHealth Advisors*, 2026 WL 1426275 (4th Cir.) (non-signatory defendant marketing company could invoke under Delaware law the arbitration clause on a third-party lead generator's website because the lead generator needed defendant to provide the insurance quotes at issue); *Jackson v. Stevenson*, 2026 WL 1390716 (Ga.) (non-signatory may not be brought into arbitration where any benefit non-signatory may have derived by signing the agreement was not based on the terms of that agreement but was based on non-signatory's alleged attempted interference with that contract).

Browsewrap Agreement Unenforceable. A website operator's attempt to bind a subscriber to an arbitration provision contained in its browsewrap agreement was rejected when the Eleventh Circuit held that the hyperlink leading to the agreement "was not sufficiently conspicuous" to put the subscriber on notice of the agreement's terms. Applying Florida law, the court noted that the determination of whether a hyperlink is sufficiently conspicuous requires an evaluation of the general design and content of the page on which the hyperlink appears. Relevant design elements include: (1) the location of the hyperlink on the page, (2) its proximity to buttons the user must click, (3) its font size, format, and color, and (4) whether the page provided an explicit textual notice that taking a certain action, such as clicking a purchase button, would constitute acceptance of the website's terms. The conspicuousness standard is calibrated to the reasonably prudent internet user, not an expert user, and, therefore, the design of hyperlinks must place such a user on notice of their existence and meaning. "Consumers cannot be required to hover

their mouse over otherwise plain-looking text or aimlessly click on words on a page in an effort to ferret out hyperlinks." Examining the website here, the court agreed with the district court's conclusion that the combination of the hyperlink's placement below prominent action buttons, its small font, its dim gray color, the absence of customary hyperlink design signals, surrounding visual clutter, and the complete absence of any mention of arbitration collectively rendered the agreement unenforceable. The district court order denying the website operator's motion to compel arbitration was affirmed. *Tejon v. Zeus Networks, LLC*, 174 F.4th 1322 (11th Cir. 2026); *Olson v. FCA US*, 2026 WL 1426411 (9th Cir.) (non-signatory car manufacturer may not invoke arbitration agreement in car dealership lease agreement where the product defect claims were not intertwined with any contractual provision in the sales agreement).

Case Shorts

- *Rose v. Mercedes-Benz USA*, 167 F.4th 975 (7th Cir. 2026) (motion to compel granted where defendant car manufacturer established rebuttable presumption in favor of acceptance of terms of service which included arbitration provision that had not been rebutted).
- *Schlacks v. Chheda*, 174 F.4th 1061 (8th Cir. 2026) (claims against non-signatories are not subject to an arbitration provision with an enforceable delegation clause, as the non-signatories ' challenge goes to the existence of a valid arbitration agreement, which is for a court to decide).
- *J.D. Anderson v. Binance*, 2026 WL 538293 (S.D.N.Y.) (constructive notice of amendment to add arbitration provision to existing online terms of use found to be lacking where plaintiffs did not receive contemporaneous notice of amendment and had no basis to know where to look for new terms).
- *Vondeylen v. Aptive Environmental, LLC*, 2026 WL 621880 (8th Cir.) (dispute occurring two years after service agreement ended is subject to arbitration where the arbitration provision was broad and did not have a sunset term).
- *BNSF Railway Co. v. Magin*, 2026 WL 828795 (E.D. Mo.) (passenger found not to have accepted any offer to arbitrate claims where the ticket was purchased by phone and where there was no evidence that sufficient notice was provided as the arbitration agreement was not confirmed at the time of purchase or present on the ticket itself).
- *Mallette v. Revette*, 430 So.3d 799 (Miss. 2026) (wife of deceased patient who signed intake form with arbitration provision for her husband lacked express or implied authority to bind him to arbitrate any dispute, and physician's motion to compel in subsequent malpractice action denied).
- *Dolphin Pointe Healthcare v. Moravia*, 2026 WL 1283563 (Fla. App.) (nursing home's motion to compel denied where elderly resident was shown to have lacked mental capacity to sign admission document mandating arbitration).

- *Harris v. W6LS, Inc.*, 171 F.4th 957 (7th Cir. 2026) (Indian tribe's online loan agreement with arbitration provision ruled unenforceable where governing law provision referenced non-existent tribal law precluding a finding of mutual assent to the agreement).
- *Florea v. The Cornwell Quality Tools Co.*, 2026 WL 1182813 (C.D. Cal.) (franchisee in California would have no reasonable expectation that he would be bound to arbitrate claim where arbitration agreement included caution that "it may not be enforceable under California law").
- *Akeo v. Palace Elite Resorts*, 2026 WL 799296 (S.D. Fla.) (arbitration provision in agreement signed as a condition to gain release from prison ruled enforceable as rooted in resolution of commercial dispute between parties rather than that of a criminal proceeding).
- *Shanahan v. IXL Learning, Inc.*, 2026 WL 982855 (9th Cir.) (school's acceptance of the terms and conditions of educational technology provider which included an arbitration provision not sufficient to bind students' parents).
- *Shanahan v. IXL Learning, Inc.*, 2026 WL 982855 (9th Cir.) (party asserting that acceptance of arbitration agreement was involuntary bears the burden of proof).
- *Carter v. SP Plus Corp.*, 172 F.4th 970 (7th Cir. 2026) (employer forfeited opportunity to challenge employee's affidavit stating that the HR representative checked the box agreeing to arbitration, and not her, and the district court appropriately lifted the stay of arbitration).
- *Olson v. FCA US*, 2026 WL 1426411 (9th Cir.) (car manufacturer may not invoke arbitration agreement in dealership's agreement where warranty dispute was not related to the relationship covered by the lease agreement).
- *Freedman Normand Friedland, LLP v. Axos Nevada, LLC*, 2026 WL 396818 (N.Y. Sup. Ct.) (non-party law firm must produce claim-adjusting records it created in an arbitration between the insured and insurer when serving in a business advisor capacity as claims processor for the insurer and not in its attorney capacity).
- *BNSF Railway Co. v. Magin*, 2026 WL 828795 (E.D. Mo.) (passengers, whose tickets were bought by friends or coworkers who clicked the box accepting arbitration, were bound to arbitrate their claims as they ratified the arbitration agreement by boarding the train).
- *Gustafson v. Washington Nationals Baseball Club*, 2026 WL 1098684 (D. Col.) (challenge to alleged "junk fees" applied to tickets purchased at box office not subject to arbitration provision on team's website).

V. CHALLENGES TO ARBITRATOR OR FORUM

Procedural Dismissal by AAA Satisfies Duty to Arbitrate. Consumers brought a mass arbitration before the AAA, involving over 50,000 notices. The AAA's Consumer Arbitration Rules require the respondent to register its arbitration agreement for a due process review. The respondent in this case refused to do so. The AAA, pursuant to its Consumer Rules, declined to administer the matter and dismissed the proceeding. The consumers moved to compel arbitration. The district court denied the motion, and the majority of a panel of the Seventh Circuit affirmed. The majority began its analysis by noting that "parties do not have a freestanding right to arbitrate." Rather, the arbitration must be conducted in accordance with the governing agreement and rules. The parties' agreement left it to the AAA to rule on procedural issues. "The AAA, vested with the authority the parties delegated to it, concluded its proceedings in [accordance with its rules]. In short, arbitration started and ended in line with the parties' agreement." The majority made clear it would not disturb the AAA's judgment where its decision to end the arbitration was within its judgment. The majority of the court concluded that "at bottom, unless the parties' agreement provided otherwise, a motion to compel arbitration is not a mechanism by which a party may seek court intervention to resolve intraarbitration procedural disputes properly delegated to arbitrators to handle" under Section 4 of the FAA. *Bernal v. Kohl's Corp.*, 174 F.4th 573 (7th Cir. 2026).

Arbitration Rejected Where Claims are Rooted in Bankruptcy Code. Two debtors filed for bankruptcy. An automatic stay was issued by the bankruptcy court. Goldman Sachs, the holder of the debt, continued its efforts to collect the debt following the issuance of the automatic stay. The debtors brought an adversary action, arguing that Goldman Sachs violated the automatic stay, and Goldman Sachs responded by moving to compel arbitration. The issue for the Fourth Circuit was whether the dispute could be arbitrated or must be adjudicated as an adversary proceeding in the bankruptcy court. The court acknowledged that there are "substantial arguments on both sides" but concluded that "arbitration would interfere and conflict with the strong and established policies and purposes of the Bankruptcy Code." The court pointed out that arbitration is "a contractually grounded out-of-court procedure that can be more efficient in resolving a dispute than a court proceeding, which is draped with many more mandated and authorized procedures." While public policy favors arbitration, the court noted that the process and relief afforded by the Bankruptcy Code is as well. The court distinguished between actions grounded in tort, contract, or statute from core claims, as here, which are rooted in the Bankruptcy Code. "While the characterization of a claim as 'core' may not automatically render the claim non-arbitral, the categorization does present a high bar to deny the Bankruptcy Court's discretion." The court emphasized that the automatic stay serves to harmonize the interests of both the creditor and the debtor by preserving the debtor's assets and centralizing

disputes over those assets in a single forum. The court concluded that Goldman Sachs' motion to compel "would thus undermine the needed centralization of claims and effectively allow Goldman Sachs, after allegedly violating the stay, to assert the primacy of a private contractual right over the collective interests of all the creditors. This would, we conclude, fundamentally interfere with a core purpose of the Bankruptcy Code." For these reasons, the Fourth Circuit rejected Goldman Sachs' efforts to compel arbitration of its dispute with the debtors. *Goldman Sachs Bank USA v. Brown*, 170 F.4th 249 (4th Cir. 2026). See also *In re: ACJK, Inc.*, 2026 WL 502192 (S.D. Ill.) (bankruptcy avoidance claims such as fraudulent conveyance and post-petition transfers are claims that belong to bankruptcy trustees and creditors, who did not sign the arbitration agreement, and therefore those claims may not be heard by an arbitrator).

AAA Sued on Anti-Competitive Grounds. A motion to dismiss a lawsuit alleging that the AAA engaged in anti-competitive behavior in the consumer context was denied. The plaintiffs in this proposed class action contend that the AAA provided favorable results to its business clients at a low cost. In denying the motion, the court pointed to the claim that the AAA administered 94% of consumer arbitrations between 2010 and 2024 and that the AAA "offers various tools on its website to create arbitration clauses that select only the AAA as the arbitral forum for all disputes, including an AI Tool and sample arbitration clauses." The court also rejected the AAA's arbitral immunity defense, finding that the claim was against the AAA as an entity and not merely as individual decision makers. The court concluded that plaintiffs had alleged sufficient facts at the pleadings stage to survive the AAA's motion to dismiss. *Stephens v. AAA*, 2026 WL 878981 (D. Ariz.).

Case Shorts

- *Metafi Pro Limited v. NY Trading*, 2026 WL 1074373 (N.D.N.Y.) (motion to dismiss in favor of arbitration denied where two arbitration agreements differed in material aspects, including applicable governing law, the appropriate arbitral forum, and pre-arbitration settlement effort requirements).

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

New York's Anti-SLAPP Law Held to Protect Law Firms Bringing Mass Arbitration Claims. The Ben Travis Law and Kind Law firms solicited claimants on social media and brought claims against two operators of social gaming websites. Hundreds of arbitrations were brought against the gaming operators. In response, the gaming operators sued the two law firms for malicious prosecution and tortious interference with respective business relations. The law firms moved to dismiss, arguing that plaintiffs' lawsuit violated the New York Anti-SLAPP law. The trial court agreed. The court noted that New York's law is broad with the goal of protecting "speech involving public petition and participation." The court explained that "consumer protection from allegedly unlicensed online casinos is a matter of

public interest." The court noted that the gaming operators had received a cease and desist order from New York's Attorney General, and concluded that defendants' advertising on social media "constitutes speech targeted at a public forum." The court reasoned that the filing of the arbitration demands by the law firms "on behalf of website users with AAA constitutes lawful conduct in furtherance of the website users' right to petition in the sole forum with Plaintiffs' contractually mandated its website users to seek redress from." The court rejected as well the gaming operator's substantive claims, noting, for example, that it was the operators who terminated the claimants' accounts with them rather than the other way around, which precludes their tortious interference claim. The court awarded attorneys' fees against the gaming operators for retaliatory litigation against the law firms under New York's Anti-SLAPP law. *SCPS, LLC v. Kind Law and Ben Travis Law*, 2026 WL 970397 (N.Y. Sup. Ct.).

Arbitration Award Against Employee Precludes PAGA Standing. An employee's commission claim under California's Labor Law was sent to arbitration, and his PAGA claim remained in court. The arbitrator ruled against the employee. When the employee sought to pursue his PAGA claim, the trial court dismissed it, finding that he lacked standing because the arbitrator's award conclusively resolved the issue. The appellate court affirmed. The court explained that whether the employee "is an 'aggrieved employee' for the purposes of PAGA standing is based on his ability to allege that he suffered a Labor Code violation." The court noted that the arbitrator, in reaching his conclusion, determined that the employee's claims failed both as a matter of fact and as a matter of law. The arbitrator's conclusive finding that the employee was not an aggrieved employee compelled a holding of lack of standing to pursue a PAGA claim. The court rejected the notion that, as a result, the award in a single arbitration would limit the state's ability to remedy illegal actions. The court explained that its ruling "does not have any binding or preclusive effect on the state's ability to assert those same claims in a different action." As a result, the court concluded that "the state is not without the ability to protect its interests when it determines such course of action is appropriate." *Sorokunov v. NetApp, Inc.*, 2026 WL 590943 (Cal. App.), rehearing granted (March 30, 2026).

Case Shorts

- *J.D. Anderson v. Binance*, 2026 WL 538293 (S.D.N.Y.) (class action waiver rejected on vagueness grounds where online users were only told that the applicable section of terms of use "involves" a waiver of certain rights including class actions).
- *Stoker v. Blue Origin, LLC*, 120 Cal. App.5th 91 (2026) (class and representative waiver provision in employment agreement is substantively unconscionable as it purports to waive representative actions under PAGA).

- *Chemaly v. Lampert*, 174 F.4th 843 (11th Cir. 2026) (beneficial owner of yacht who was not on the vessel when seaman was injured cannot be required to arbitrate claim on equitable estoppel grounds).
- *Barron v. General Motors*, 2026 WL 1383769 (E.D. Pa.) (General Motors may not compel arbitration of class action against it by car purchasers based on arbitration provision in purchase agreement with car dealership).

VII. HEARING-RELATED ISSUES

Post-Award Discovery Rejected Based on Speculative Claim of Missing Discovery. An ICC commercial panel issued an award in favor of VGC and against Shell Oil. During the hearing, Shell made two applications seeking allegedly undisclosed communications between VGC and an independent engineer whose testimony was central to the dispute. Following an oral argument, the panel denied Shell's applications. The Panel ruled in favor of VGC. Shell moved in court for permission to seek discovery in aid of its petition to vacate the award. The New York trial court denied the application. The court began by noting that courts are "understandably reluctant" to "second-guess the arbitrators' determinations with respect to the scope of discovery." The court emphasized that the arbitrators had the benefit of witnessing the independent engineer's testimony. "Thus the arbitrators were in a far better position than this Court to assess whether, in light of the extensive discovery process they themselves oversaw, on balance there was a need for additional discovery in the midst of an evidentiary hearing." The court was not persuaded by Shell's arguments which they found to be "conclusory and speculative." "To grant Shell's discovery request would be to permit the very discovery rejected by the Tribunal on the speculative basis that perhaps the Tribunal did not accurately assess the risk that relevant documents were being withheld." The court added that, unlike here, courts that have allowed post-award discovery focused on facts external to the arbitration proceeding itself. For these reasons, the court denied Shell's application for leave to conduct discovery and confirmed the award. *Shell NA LNG, LLC v. Venture Global Calcasieu Pass, LLC*, 2026 WL 623734 (N.Y. Sup. Ct.).

Case Shorts

- *Hinkes v. Sunera Technologies*, 2026 WL 1453563 (7th Cir.) (arbitrator's admission of hearsay evidence did not violate Section 10(a)(3) of the FAA as the arbitrator was not accused of refusing to hear evidence but rather of "hearing too much evidence").
- *Fortis Advisors, LLC v. Stillfront Midco AB*, 2026 WL 406073 (Del.) (accountant arbitrator's failure to follow AICPA standards in rendering ruling found not to be a factor in determining whether vacatur was appropriate).
- *Frank v. Tesla, Inc.*, 2026 WL 1195740 (9th Cir.) (employee suing Tesla failed to demonstrate that the arbitrator exceeded her authority by not authorizing the

deposition of a witness who ultimately appeared at the hearing and a second one of Elon Musk).

VIII. CHALLENGES TO AND CONFIRMATION OF AWARDS

Award Vacated Where Obtained by Fraud. A dispute arose between joint venturers, Eletson and Levona. An award was issued in Eletson's favor. Key to the arbitration award was evidence that Eletson had exercised a purchase option. The arbitrator relied on the testimony of three witnesses for Eletson, who are also its beneficial owners, in concluding that the purchase option had been exercised. In later proceedings, documentary evidence made it clear that this testimony was knowingly false. Levona moved to vacate the award and for sanctions. Both motions were granted. The court noted that "the documents produced pursuant to the crime-fraud exception clearly demonstrate the perjurious nature of the principals' testimony at the arbitration." The court explained that there is "no serious argument" that the failure to produce the relevant documents, which would have revealed the "ruse being created in real time," may have led the arbitrator to reach a different result. The court rejected Eletson's reliance on the informality of discovery in arbitration as an explanation for its failure to produce the problematic documents. The court explained that "the informality of the arbitration process should not be confused with the license to willfully violate the disclosure obligations of the arbitral tribunal. [Eletson] did not enjoy the liberty to withhold the numerous documents that are most centrally related to this case on the pretext that because discovery was informal it was meaningless." The court concluded that "the evidence is clear and convincing that Eletson committed fraud in the arbitration and on the Arbitrator that was material to the result and that Levona could not have discovered even with due diligence. As a result of the fraud, Levona was denied a fair hearing." *Eletson Holdings, Inc. v. Levona Holdings, Ltd.*, 2026 WL 84510 (S.D.N.Y.).

Evident Partiality Under Virginia Law Defined. An arbitrator on a three-person FINRA panel did not recall meeting a party, Di Vincenzo, five years earlier at a board meeting. Di Vincenzo had a brief and unprofitable business relationship with that entity for which the arbitrator was a board member. Di Vincenzo prevailed in the arbitration and the losing party moved to vacate the award under the Virginia Arbitration Act on evident partiality grounds. The issue before the Virginia Supreme Court on appeal was what constitutes "evident partiality" under the Virginia statute. The Court, focusing on the "plain language" of the statute, concluded that a party seeking to vacate an award on evident partiality grounds "must show that a reasonable person, knowing all the relevant facts, would conclude that the arbitrator's conduct signifies obvious bias against that party." The Court emphasized that this is "an exacting standard without rigid bright lines" given the varied settings in which an arbitration may arise and "strongly counsel[s] against a granular approach." Applying its newly announced standard, the Court concluded that the evident partiality standard had not been met in this case. To warrant vacatur, an arbitrator's non-

disclosure must be material and concern "information that would lead a reasonable person to conclude that the arbitrator was unable to remain impartial throughout the proceeding." The Court characterized the arbitrator's limited interaction with Di Vincenzo as reflecting "typical boardroom formalities" that would not "cause an objective observer to infer favoritism; it would not even give rise to an appearance of impropriety or a slight business relationship." The Court added that the business relationship between Di Vincenzo and the arbitrator was *de minimis* as the arbitrator was not directly involved in negotiating or terminating the deal at issue, the partnership lasted only a year generating only $8,000 in revenue and ended four years before the arbitration. In sum, the Court concluded that the arbitrator's "imperfect disclosures and inability at the time of the arbitration to recall past interactions would not lead a reasonable person to conclude that he harbored obvious bias in favor of Di Vincenzo." *Garofalo v. Di Vincenzo*, 926 S.E.2d 280 (Va. 2026). See also *BLC Lexington SNF v. Townsend*, 171 F.4th 788 (6th Cir. 2026) (arbitrator's failure to disclose a "three-decade-old public censure over improper campaign contributions" when he was a state court judge ruled insufficient to demonstrate evident partiality).

Arbitrator Bias Claim Waived Where Belatedly Raised. The arbitrator here was jointly selected by claimants who were reinsurers and respondent, a risk retention group. One of the issues in the case was the absence of a "follow the settlements clause" in the applicable agreements. The arbitrator failed to disclose that he had previously testified as an expert on that issue. The arbitrator ruled in favor of respondent, and claimants moved to vacate the award on evident partiality grounds. The court rejected this claim, holding that the reinsurers waived any objection to the arbitrator's participation in the proceeding. The court noted that the reinsurers "could have searched the Arbitrator's name in a Lexis, Google, or ARIAS U.S. Forms search, all of which reveal the Arbitrator's prior testimony." The court added that the arbitrator had included in his CV that he had testified as an expert witness in industry cases. The Arbitrator's prior expert witness testimony was available through reasonably diligent investigation by the Reinsurers well before he was selected as the sole Arbitrator." Further, during the proceeding, the reinsurers requested and received the arbitrator's disclosure regarding his expert testimony and nonetheless continued with the proceeding. The court noted that "even though the Arbitrator subsequently determined that he could arbitrate the case fairly, the Arbitrator could have withdrawn if requested by the Reinsurers and may well have done so." The court concluded that the arbitrator did not exceed his authority and it confirmed the award. *Hamilton Managing Agency v. ICI Mutual Insurance Co.*, 2026 WL 1006464 (D. Vt.).

Vacatur Required Where Express Contract Language Governs Over AAA Rules. The arbitration agreement here included a curious provision requiring the arbitrator to "conduct a post-award review" of any award of punitive damages. The arbitrator here awarded $10,000 in punitive damages in a consumer case. Respondent asked the arbitrator to

conduct a post-award review of her punitive damages award. The arbitrator declined to do so, reasoning that the arbitration was conducted in accordance with the AAA's Consumer Arbitration Rules and she was not permitted to re-determine the merits of any claim already decided. The district court confirmed the award, but the Seventh Circuit reversed. The court explained that while "the arbitration agreement required the arbitrator to apply the AAA rules by default, the arbitrator was required to apply the terms of the arbitration agreement when the rules conflicted." The court found nothing ambiguous in the language and reasoned that the arbitrator "ignored the plain language of the arbitration agreement." In doing so, the court concluded that the arbitrator exceeded her authority. *USAA Savings Bank v. Goff*, 170 F.4th 1051 (7th Cir. 2026).

Punitive Damages Award Upheld. An Iowa district court rejected UBS Wealth Management's attempt to vacate a $69 million punitive damages award issued in favor of former clients by a FINRA arbitration panel. The panel's determination after 39 days of hearings was based on its findings of years-long misrepresentations by UBS, unsuitable investment advice, improper communications, alteration of business records, deletion of evidence, and a refusal to concede any wrongdoing. UBS challenged the award on two separate grounds—that the panel exceeds its authority by awarding "grossly excessive" punitive damages in violation of well-defined public policy and that it failed to satisfy the requirements of Iowa Code § 668A.1, which requires courts to make specific findings when a punitive damages award is made. The court's analysis began by recognizing UBS's attempt to sidestep a direct due process challenge by framing its argument as a public policy objection. The court explained, however, that due process protections apply to state action, such as when a court awards punitive damages, but not to private parties contracting to resolve disputes through arbitration. Allowing UBS's due process challenge here, the court warned, "would open the courthouse doors to every losing party following an arbitration award of punitive damages" and "would effectively permit litigants to end-run the prohibition on judicial reconsideration of the merits of an arbitration award." The court therefore held that "UBS failed to carry its heavy burden" of demonstrating that a public policy was violated here. Finally, the court addressed UBS's argument that the panel exceeded its authority by failing to set forth any findings in support of the punitive damages award, as required by Iowa Code § 668A.1, and rejected it on two independent grounds. First, the court held that this section of the Iowa Code, with its use of the terms "trial," "jury," and "court," is "tailored to punitive damage awards in a judicial setting" and has no application to arbitration awards. Second, the court observed that, even if the Iowa Code applied, the parties' arbitration agreement provided that the panel "was not required to include factual findings or legal reasoning" in issuing an award. As such, UBS "cannot now use the absence of an explained decision as a sword to vacate the panel's award." Concluding that UBS failed to demonstrate any basis upon which the award could

be modified or vacated, the arbitration award was confirmed. *UBS Financial Services, Inc. v. Hansen*, 2026 WL 1181000 (S.D. Iowa).

Award Vacated on Lack of Standing Grounds. Two members of an LLC declared themselves liquidating trustees and brought a derivative litigation and arbitration against the entity's former managers alleging breach of fiduciary duty and fraud. The respondent challenged the claimants' standing to bring the action, but the arbitrator rejected the challenge and awarded over $20 million to the claimants. The award was confirmed at the trial level, but on appeal, a majority of the California appellate panel reversed and vacated it. The majority reasoned that a jurisdictional defect cannot be waived. The majority, in reviewing the underlying facts, questioned whether the claimants were properly appointed as liquidating trustees, an issue the arbitrator resolved in favor of claimants. The majority based its holding on the principle that members of an LLC cannot sue individually because the entity is the real party in interest. The majority found that the defense to the arbitrator's award was not warranted, as "an arbitrator exceeds his powers when he acts without subject matter jurisdiction." The appellate court remanded the case to the trial court to "make a factual determination on remand and resolve whether [claimants] had standing to file suit." *NNN Capital Fund I v. Mikles*, 119 Cal. App.5th 1200 (2026), review filed (May 26, 2026).

Delaware Supreme Court Rejects Evident Partiality Claim. A partner from BDO was retained by the parties to resolve a dispute regarding a post-closing earn-out payment. BDO, in its disclosure, represented that it had no conflicts and reserved the right to engage with the parties in the future. The arbitrator ruled that the claimant, Fortis, was not entitled to any recovery. Fortis moved to vacate the award on evident partiality grounds, arguing that BDO failed to disclose alleged conflicts with the prevailing party's counsel, DLA Piper. The Delaware Court of Chancery denied the motion, and the Delaware Supreme Court affirmed. Fortis, in supporting its application, pointed out that the DLA lead counsel in the case, after BDO was selected to arbitrate the dispute, sought to be engaged in a separate BDO matter (which did not occur) and that DLA, in an unrelated bankruptcy case, represented that it had represented BDO as its counsel. The Delaware Supreme Court rejected these claims, holding that "Fortis produced insufficient evidence to allege a relationship that is direct, definite, and intimate enough as to cast serious doubt" on the arbitrator's impartiality. With regard to DLA's attempt to be engaged in a separate matter, the court noted that, even apart from the fact that the attempt failed, it was an "arm's-length transaction between two market professionals." The court emphasized that the parties in this case were "sophisticated actors," and BDO specifically reserved the right to engage with them in future matters. With regard to the bankruptcy filing, the court noted that the representation at issue was unrelated and involved a BDO subsidiary. "This relationship, in our view, is too attenuated to equate it with the obvious and substantial impartiality" required for vacatur. For these reasons, the Delaware Supreme Court affirmed

the denial of Fortis's motion to vacate. *Fortis Advisors, LLC v. Stillfront Midco AB*, 2026 WL 406073 (Del.).

Case Shorts

- *BLC Lexington SNF v. Townsend*, 171 F.4th 788 (6th Cir. 2026) (arbitrator did not exceed his authority where he applied correct legal standards and comprehensively evaluated the issues before him).
- *Franz Haas GMBH SRL v. Winebow, Inc.*, 2026 WL 837288 (9th Cir.) (challenges to confirmation of foreign arbitration award, including minor typographical translation error and failure to attach arbitration agreement to the petition, rejected as "empty formalism" that did not preclude confirmation of the award).

IX. ADR – GENERAL

Attorney-Client Privilege Does Not Apply to Communications on AI Platform. Heppner, an executive with several corporate entities, received a grand jury subpoena which indicated that he was the target of a government investigation into claims of securities and wire fraud. Without checking with counsel, Heppner entered information he had learned from his counsel into the generative AI platform Claude in preparation for seeking legal advice, which he later shared with his counsel. Heppner was indicted, and the FBI obtained a search warrant and seized numerous documents from his electronic devices, including the documents related to his Claude exchange. Heppner argued that these communications were privileged as they outlined defense strategy and potential factual arguments to be made. The court rejected Heppner's claim that the attorney-client privilege applied to the communications with Claude. The court emphasized that Heppner's communications were not with counsel and were not confidential. Although a "close call", the court also concluded that Heppner did not communicate with Claude for the purpose of obtaining legal advice. The court acknowledged that "had counsel directed Heppner to use Claude, Claude might arguably be said to have functioned in a manner akin to a highly trained professional who may act as a lawyer's agent within the protection of the attorney-client privilege." But that was not the case here as Heffner communicated with Claude on his own volition and, even if he sought to later share this with counsel, "what matters for the attorney-client privilege is whether Heppner intended to obtain legal advice from Claude, not whether he later shared Claude's outputs with counsel." The court also rejected the assertion that the work product doctrine applies, as the information gathered was not at the behest of counsel, nor did it reflect counsel's strategy. Artificial intelligence, the court opined, "presents a new frontier in the ongoing dialogue between technology and the law"; its novelty did not change the "longstanding legal principles, such as those governing the attorney-client privilege and the work product doctrine." For these reasons, the court concluded that Heppner's communications with Claude would not be afforded either

attorney-client privilege or work product status." *United States of America v. Heppner*, 820 F. Supp.3d 292 (S.D.N.Y. 2026).

Case Shorts

- *Garofalo v. Di Vincenzo*, 926 S.E.2d 280 (Va. 2026) (an ADR provider's disclosure requirements did not provide an independent basis for vacatur as "an arbitration agency's rules do not control the vacatur inquiry undertaken by a court").
- *Capolongo v. Spotify USA*, 2026 WL 1179653 (S.D.N.Y.) (effective vindication doctrine only applies where challenge is to the assertion of rights under federal, rather than state law).
- *Capolongo v. Spotify USA*, 2026 WL 1179653 (S.D.N.Y.) (claim that $215 filing fee was unenforceable because it may exceed recovery on claimant's claim rejected where no showing of inability to pay).

X. COLLECTIVE BARGAINING SETTING

Labor Award Confirmed Even If On a Less Plausible Basis. The labor arbitrator in this case upheld the union's grievance based on the arbitrator's interpretation of the collective bargaining agreement (CBA) as clear and unambiguous. Management moved to vacate the award, pointing to provisions in the CBA that undercut the arbitrator's contractual analysis. The district court denied the motion to vacate, and the Eighth Circuit affirmed. The court, applying §301 of the Labor Management Relations Act, explained that it was required to confirm the award if it drew its essence from the CBA and as long as the arbitrator "arguably construed and applied the CBA." The court concluded that the arbitrator did not exceed his authority in interpreting the CBA even if the employer's reading of the applicable contract provision "is more plausible." The court also rejected the employer's attempt to introduce extrinsic evidence, finding that the "argument requires us to speculate about how the arbitrator viewed the mutual intent of the parties and extrinsic evidence, which we cannot do." For these reasons, the court affirmed the district court's ruling confirming the arbitration award. *Citywide Construction Products v. Teamsters Local Union No. 245*, 167 f.4TH 1015 (8th Cir. 2026).

Union's Motion to Compel Denied as Dispute Not Covered by CBA. Plaintiff union and Energy Harbor arbitrated a dispute in 2021, and the arbitrator ruled on the proper healthcare contribution to be made by the employer for the year 2021. A new collective bargaining agreement was entered into, and a dispute arose between the parties over the 2022 contribution rate. The new collective bargaining agreement required that healthcare contributions be increased by the same percentage as the prior year. When the 2022 rate was set, the union argued that the arbitration award was not considered in setting the rate and filed a grievance. The district court granted the union's motion to compel arbitration,

but the Third Circuit reversed. The majority reasoned that the dispute related to the 2021 arbitration award, not to any specific term of the collective bargaining agreement. The court characterized the union's citation to the collective bargaining agreement's rate increase provision as just "window dressing." The court rejected the union's argument that, by denying the motion to compel, it was delving into the merits, which was the arbitrator's domain. The court disagreed, reasoning that a court may "touch incidentally the merits" where the merits and arbitrability issues are inextricably intertwined. "A dispute is not arbitrable if the 'context' of the collective-bargaining agreement makes clear that the agreement has 'nothing to do with' the rights that the Union asserted in its grievance." If that were not the case, the court opined, then "any party could gin up access to arbitration just by asserting that the other party had failed to live up to its duties." In sum, the court rejected the union's motion to compel on the ground that the rights claimed were not covered by the collective bargaining agreement. *International Brotherhood of Electrical Workers v. Energy Harbor Nuclear Corp.*, 171 F.4TH 222 (3d Cir. 2026).

Case Shorts

- *Christianson v. Grand Forks Public School District*, 2026 WL 471925 (N. Dak.) (school board failed to substantially comply with grievance procedure under the collective bargaining agreement by issuing a determination two days late and thereby forfeited its right to arbitrate claim).
- *George v. Piedmont Airlines*, 2026 WL 1230343 (3d Cir.) (bonus dispute involving airline pilot under USERRA constitutes minor dispute under the Railway Labor Act and must be arbitrated under the collective bargaining agreement's grievance procedure).
- *Department of Human Resources v. California Correctional Peace Officers Association*, 2026 WL 1361422 (Cal. App.) (arbitrator's reinstatement of state prison guard and union official who was disciplined for an alleged inappropriate posting did not violate public policy and the award was confirmed).
- *District of Columbia Metropolitan Police Department v. District of Columbia Public Employee Relations Board*, 2026 WL 1424772 (D.C. Ct. App.) (a labor arbitrator's award converting the termination of an off-duty police officer who used deadly force contrary to policy to a 45-day suspension did not violate any public policy as no statutory or regulatory mandate was violated).

XI. DEVELOPMENTS

Virginia Enacts Arbitration Fairness Act. Virginia enacted its Arbitration Fairness Act, which seeks to instill more transparency and balance in consumer and employment arbitrations. The Act is directed at "high-volume arbitration service providers" which is defined as any provider that administers more than 100 arbitrations per year arising out of pre-dispute arbitration agreements connected to Virginia. The Act prohibits providers from requiring a party to accept a particular arbitrator selected in a pre-dispute agreement. The Act also imposes further disclosure obligations on arbitrators, including any matter that could cause a reasonably informed person to doubt the arbitrator's impartiality. The Act also requires a business or employer that drafted a pre-dispute arbitration agreement to pay costs within 30 days after payment is due, otherwise risking default or waiver of the right to arbitrate.

Canadian Arbitration Award Annulled Based on AI Hallucination. An arbitration award was annulled by the Quebec Superior Court where the arbitrator relied on non-existent court decisions generated by an AI tool. The non-existent cases were central to the arbitrator's reasoning. The court concluded that the arbitrator abdicated his duties by not verifying the case law citations provided to him and, for these reasons, annulled the award. The judge noted that parties expect an arbitrator to make the decision and "a failure to comply with the arbitration procedure . . . is not limited to the procedure relating to the hearing itself but may include a violation relating to the deliberations." *Quebec Association of Intermediate Housing Resources v. Quebec Health-Integrated University Health*, Case No. 2026 QCCS 1360 (Quebec Sup. Ct.).

XII. TABLE OF CASES