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Feliu Case Summaries:

November 2026

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I. JURISDICTIONAL ISSUES: GENERAL

Arbitration Subpoena Enforced in Non-Situs District. The arbitration panel, sitting in New York, issued a deposition subpoena to a non-party witness in San Francisco. The panel agreed to convene in San Francisco, but the deponent declined to appear. The moving party sought to enforce a subpoena. The issue for the court was whether Section 7 of the FAA allows arbitrators to sit in more than one location to obtain material evidence. The court acknowledged that courts are divided on this question. It concluded, however, that the "text of Section 7, together with the purpose and structure of the FAA and its Rule 45 counterpart, supports interpreting the 'sitting in' language to permit arbitrators to 'sit' in locations other than the site of the final hearing to gather evidence and testimony that are reasonably necessary and beneficial to the proceeding." The court emphasized that Section 7 allows issuance of the arbitration subpoena "in the same manner provided by law for securing the attendance of witnesses." The court noted that Rule 45 of the Federal Rules of Civil Procedure was recently amended to permit nationwide service of arbitral subpoenas. To limit the arbitrators' authority to issue enforceable subpoenas to the district in which they sit "would render the amendments meaningless" in the arbitration context. The court noted that Section 7 did not expressly prohibit arbitrators from sitting in more than one district. In addition, Rule 12 of the AAA's Commercial Arbitration Rules, which applied in this case, provides that arbitrators, in their sole discretion, may "conduct special hearings for document production purposes or otherwise at other locations if reasonably necessary and beneficial to the process." For these reasons, the court enforced the panel's subpoena and required the deponent to testify before the panel in San Francisco. *Zwick v. Prickel*, 2026 WL 1454305 (N.D. Cal.), appeal filed (May 29, 2026).

Arbitrators May Revise Final Award to Clarify an Ambiguity. An arbitration panel issued an interim award determining liability, but not damages, in a dispute over the distribution of administrative fees earned from the sale of shares in a co-owned management fund. The panel determined that Prospect, which administered the distribution of administrative fees, had violated the parties' contract by excluding one category of those shares from its distributions, but the interim award did not make clear how the panel's decision applied to other categories of disputed shares. When the parties raised this issue, the panel issued a revised award clarifying that its earlier decision applied to all disputed share categories. Prospect sought vacatur, arguing that the revised award violated the *functus officio* doctrine. The district court found that the panel's revised award fit within the ambiguity exception to the *functus officio* doctrine, and the Third Circuit affirmed. In doing so, the court began by noting that the parties adopted the AAA's rules which empowered the arbitrators to interpret their own powers and duties. The court emphasized that the applicable AAA rule "allocates to the arbitrators expansive authority to mark the outer boundaries of *functus officio*. So we afford broad deference to the arbitration panel's

interpretation and application of *functus officio*." The court acknowledged that less-than-clear reasoning created ambiguity, but the parties conferred on the arbitrators the ability to interpret the rules; therefore, the court must defer to the panel's ruling so long as it arguably construes the contract, which it did here. The court viewed the interim award as final on liability because it granted relief on some claims, dismissed the rest, and reserved on damages. *Prospect Capital Management LP v. Stratera Holdings, LLC*, 185 F.4th 429 (3d Cir. 2026).

All Claims Barred from Arbitration Where EFAA Properly Invoked. When properly invoked, the Ending Forced Arbitration Act enables a plaintiff who alleges conduct constituting sexual harassment or sexual assault to elect to invalidate an arbitration agreement that predates the alleged harassment or assault. In a matter of first impression for the Second Circuit, the issue presented was whether, in making such an election pursuant to the EFAA, a plaintiff can only invalidate the arbitration agreement as to the sexual harassment and/or sexual assault claims within that lawsuit or if the arbitration agreement is set aside as to all of the claims raised, including non-assault/harassment claims. Starting with the plain language of the statute, the court observed that the EFAA applies to "a *case* which . . . relates to [a] . . . sexual harassment suit." The word "case," noted the court, "is read most naturally to refer to an entire lawsuit. The term is one of long familiarity and often operates as a commonplace descriptor for a judicial proceeding as a whole." The court found support for its understanding in widely accepted definitions describing "case" as "a suit or action in law or equity" and in reported decisions where "the Supreme Court and this Court frequently use the term 'case' to refer to a lawsuit as a whole" and, in contrast, use "the term 'claim' to refer to a specific cause of action within that lawsuit." The court also observed that the EFAA's drafters used the word "claim," rather than case, in certain sections of the statute when referring to a narrower legal remedy, such as a specific cause of action within a lawsuit. The court therefore concluded "that the use of different words within the same statutory context strongly suggests that different meanings were intended" and found that this "interpretation of the EFAA is consistent with the two other circuits to consider this issue so far," (the Sixth and Ninth) as well as "[n]umerous district courts and state courts [that] have also reached the same conclusion." The court therefore held that, when the EFAA is properly invoked, a plaintiff can invalidate an arbitration agreement with respect to the entire lawsuit, including any non-harassment claims. *Diaz-Roa v Hermes*, 2026 WL 2931801 (2d Cir).

EFAA Can Bar Arbitration of Complaint Sounding in Negligence Only. Plaintiff here was a college student and a member of the Sigma Delta Tau sorority ("SDT"), defendant in this action. Her lawsuit against SDT alleged that SDT required its members to attend a fraternity event but failed to supervise and protect them, thereby exposing plaintiff to the sexual assault she allegedly suffered at the event. SDT moved to compel arbitration, relying on an

arbitration provision in a membership contract the plaintiff entered into with the sorority. Plaintiff opposed the motion to compel, arguing that her complaint raised sexual assault claims that permit her to invalidate the arbitration agreement pursuant to the EFAA. On appeal of the trial court's order granting SDT's motion to compel, the New York appellate court acknowledged that the case "presents an issue of first impression for this Court: whether the [EFAA] can serve to prevent arbitration, notwithstanding an arbitration clause in a contract between the parties, of an action sounding in negligence against a party that did not commit the alleged sexual assault." The court began its analysis by reviewing the operative text of the EFAA, which applies to any matter that "relates" to a "sexual assault dispute." The court drew upon common dictionary definitions to conclude that the term "relate" is generally interpreted quite "expansively" and means "to have relationship or connection" with or "to show or establish logical or causal connection between" things. The court also found that the term "sexual assault dispute," as defined in the EFAA as a "dispute involving a nonconsensual sexual act or sexual contact . . . including when the victim lacks capacity to consent" has likewise been given an expansive interpretation. Taking these two definitions together, the court found that they "suggest that Congress intended for the EFAA to broadly prevent the enforcement of predispute arbitration agreements in legal proceedings that have a logical connection or nexus to an expansive category of sexual assault or sexual harassment disputes, as defined in the EFAA." As such, the court determined that plaintiff's complaint alleging SDT's negligence based on the alleged failure of the sorority to supervise and protect its members at a function they were required to attend, which led to the alleged sexual assault, was sufficient to create a "logical nexus" between the action sounding in negligence and the underlying sexual assault. As such, the trial court's order granting SDT's motion to compel arbitration was reversed. *C.N. v Sigma Delta Tau Society*, 2026 WL 2855525 (N.Y. App. Div.).

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- *Decloedt v. Radnet Management*, 121 Cal. App.5th 732 (2026) (EFAA applies to sex orientation claim barring arbitration where the claim was sufficiently pled).
- *Smith-Wilson v. Horizon Media Holdings*, 2026 WL 2410773 (S.D.N.Y.) (CEO's demeaning and dismissive language and treatment directed at female plaintiffs, even if without lewd content, constituted claims of sexual harassment barring arbitration of these claims under EFAA).
- *Su AI v. Tencent America, LLC*, 2026 WL 2170875 (N.D. Cal.) (plaintiff's claims, such as coworker calling her the "boss's wife" and the "landlady who collects rent" did not plausibly state a sexual harassment claim under California law and therefore was not governed by the Ending Forced Arbitration Act).

- *Combs v. Netflix, Inc.*, 180 F.4th 1201 (9th Cir. 2026) (plaintiff's complaints of a sexualized work environment occurred before enactment of the EFAA and, therefore, her sex harassment claim is subject to arbitration).
- *Ding v. Structure Therapeutics, Inc.*, 187 F.4th 1231 (9th Cir. 2026) (employee who initiated arbitration alleging discrimination may later withdraw from arbitration where she learns in discovery facts supporting a viable sexual harassment claim under EFAA, which bars arbitration of such claims).
- *Wynn-Williams v. Meta Platforms, Inc.*, 2026 WL 2621253 (N.D. Cal.) (sexual harassment complaint subject to arbitration where allegations of harassment preceded enactment of the EFAA and no new facts were learned during the arbitration).
- *Hankins v. Burlington Stores*, 2026 WL 1480393 (E.D.N.Y.) (leave to amend to add facts related to sexual harassment claim granted in face of employer's claim that the sexual harassment allegations were insufficient to fall within the bounds of EFAA).
- *Swartz v. ESPN*, 2026 WL 1507403 (M.D. Pa) (FAA preempts heightened standard for browsewrap arbitration agreements because it holds certain arbitration agreements to a higher standard than other agreements.)
- *Betanco v. Living Spaces Furniture*, 121 Cal. App.5th 411 (2026), review denied (Sept. 16, 2026) (delivery driver transporting goods from warehouse to customers is covered by FAA transportation worker exemption).
- *Joyner v. Frontier Airlines*, 2026 WL 2576779 (10th Cir.) (a court must focus on the actual work performed by plaintiff's class of workers broadly rather than on work performed by any one worker, including a plaintiff, in determining whether the FAA transportation worker exemption applies).
- *Las Vegas Police Protective Association v. City of Las Vegas*, 590 P.3d 914 (Nev. 2026) (timeliness of grievance is a procedural prerequisite and not a matter of arbitrability and therefore not for arbitrator to decide).
- *Titan Consortium 1 v. Argentine Republic*, 182 F.4th 1038 (D.C. Cir. 2026) (action to enforce an award issued by a panel under the auspices of the International Center for Settlement of Investment Disputes timely filed under the District of Columbia's 12-year statute of limitations applicable to money judgments).
- *Global Voice Group v. Republic of Guinea*, 177 F.4th 299 (D.C. Cir. 2026) (court, in applying the arbitration exception under the FSIA, must first determine the source of the law governing the question of enforcement and then determine whether the sovereign is bound to arbitrate the claim).
- *Venezuela US SRL v. Bolivarian Republic of Venezuela*, 178 F.4th 679 (D.C. Cir. 2026) (award against Venezuela, which was represented by a government that the U.S. no longer recognized, is affirmed as recognition of a damages award is not evidence of endorsement of any government or as undermining the U.S. president).

- *Tri-Star Imports v. Jackson Lewis*, 2026 WL 995054 (Mo. App.) (motion to compel denied where law firm's failure to include Missouri's mandatory notice of binding arbitration renders the arbitration agreement unenforceable).
- *Qatar National Bank v. Republic of South Sudan*, 2026 WL 2117457 (D.D.C.) (U.S. courts are not authorized to reject award issued by the Center for the Settlement of Investment Disputes based upon "vague allegations of corruption stemming from the underlying dispute").
- *Devas Multimedia v. Antrix Corp.*, 187 F.4th 1077 (9th Cir. 2026) (forum non conveniens doctrine does not apply to a New York Convention action seeking to enforce an international arbitration award, as the assets at issue are in the United States and only a United States court can attach those assets).
- *Transportation Consultants v. Certain Underwriters at Lloyds*, 190 F.4th 386 (5th Cir. 2026) (arbitration clauses in agreements with domestic insurers are unenforceable under Louisiana law and equitable estoppel cannot be used to compel arbitration).
- *Van Faassen v. Lindberg*, 181 F.4th 480 (4th Cir. 2026) (the FAA's provision providing that a party "may" seek to confirm an award under the New York Convention within three years after issuance of the award is mandatory, and not permissive).
- *Big Iron Auction Company v. Harder Capital*, 321 Neb. 918 (2026) (arbitrator's award holding restrictive covenants to be unenforceable did not preclude an award by the court of attorneys' fees under Nebraska law for dissolving the court injunction that had temporarily enforced the flawed restrictive covenant).

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

Enforceability of Delegation Provision involving Non-Signatory for Court to Decide. A non-signatory car manufacturer sought to compel arbitration of class-action warranty claims based on warranty agreements in a car dealership's agreement. The question for the court was who decides whether the non-signatory car manufacturer could invoke the arbitration agreement, the court or the arbitrator. The court concluded that the issue presented was whether "Plaintiffs have raised a plausible challenge to the formation of the agreement to arbitrate or delegate. If they have, the Court must resolve that challenge because questions of contract formation are for courts, not arbitrators." In doing so, the court cited the Supreme Court's recent decision in *Coinbase v. Suski*, which resolved whether a later agreement containing a forum-selection clause superseded an agreement containing an arbitration provision. The court found determinative that plaintiffs "never agreed to arbitrate disputes with [the car manufacturer]. The express language of the Dealership Agreements, therefore, fatally undermines the foundational premise of the [car dealership's] delegation argument." Because there was no clear and unmistakable evidence that plaintiffs agreed that the car manufacturer could invoke the dealership agreements containing the

delegation provisions, the court retained jurisdiction to rule on the arbitrability question. *Frisch v. FCA US, LLC*, 2026 WL 1831998 (E.D. Mich.).

Delegation in Context of Multiple Agreements. Substantive arbitrability is decided by the court unless the parties to an agreement clearly and unmistakably provide otherwise. When multiple agreements are implicated and diverge on dispute resolution, the court must first determine the governing contract. Here, there were three agreements at issue: a Services Agreement containing a broad arbitration clause requiring arbitration to be conducted under the AAA Rules; an Amended Operating Agreement (AOA) with a provision sending all disputes to a Delaware court, and; a Subscription Agreement that was silent on dispute resolution but explicitly incorporated the terms of the AOA and the Services Agreement. The question to be resolved by the Delaware Chancery Court was "whether the Subscription Agreement and AOA prevent the court from finding unmistakable evidence of the parties' intent to delegate substantive arbitrability to an arbitrator." Noting that this was "a matter of contract construction," the court first turned to the AOA and observed that its integration clause covered the Subscription Agreement and any "side letter or similar agreement." The parties had already stipulated that the Services Agreement was a "side agreement," and this led the court to conclude that it was subsumed by the AOA's integration clause as well. Distilling the analysis one step further, the court explained that the "potential conflict regarding arbitrability" stems from the fact that the Subscription Agreement "point[ed] to" both the Services Agreement (with the arbitration provision) and the AOA (with the provision sending all disputes to court). This conflict was "quickly resolved," however, by applying the AOA's directive that "any terms contained in a side letter or similar agreement . . . shall govern . . . notwithstanding the provisions of this [AOA] or any subscription agreement." Therefore, reading the collective provisions together, the court reframed the operative language to say: "The parties hereto agree that [the arbitration agreement] contained in [the Services Agreement] shall govern . . . notwithstanding the provisions of [the AOA] or [the Subscription Agreement], [including the AOA forum provision]." As such, the court held that it lacked jurisdiction to consider questions of substantive arbitrability because the delegation of arbitrability in the Services Agreement was "sufficient to defer the question of substantive arbitrability for claims under the Subscription Agreement to the arbitrator." *Trellis v. ClearList*, 2026 WL 1880361 (Del. Ch.), cert. denied, 2026 WL 2199091 (Del. Ch.), appeal refused, 2026 WL 2664349 (Del). Cf. *MNA Gloves SDN BHD v. London Luxury, LLC*, 2026 WL 1971250 (S.D.N.Y.) (clear and unmistakable delegation of the arbitrability issue to the arbitrator, lacking, despite application of the SIAC rules, where the court cannot determine whether the exemption applies without delving into the provision's textual analysis).

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- *5-Star General Store v. American Express Co.*, 189 F.4th 5 (1st Cir. 2026) (AmEx waived its right to arbitrate by ignoring AAA's repeated warning that it was administratively closing the proceeding absent payment and its failure to pay the requisite fees constituted conduct inconsistent with an intent to arbitrate).
- *Geller v. Uber Technologies*, 2026 IL 132066 (Ill.) (wife's wrongful death suit not subject to husband's Uber agreement, which included delegation clause, even though wife had her own Uber agreement with a delegation clause, as husband's agreement did not contain language signaling agreement to arbitrate claims arising from a third party's use of Uber's services).
- *MNA Gloves SDN BHD v. London Luxury, LLC*, 2026 WL 1971250 (S.D.N.Y.) (clear and unmistakable delegation of arbitrability questions to arbitrator found to be lacking despite incorporation of AAA Rules where agreement excepted intellectual property disputes from arbitration and dispute arguably raised such claims).
- *1199 SEIU United Healthcare Workers East v. Chinese-American Planning Council Home Attendant Program*, 182 F.4th 67 (2d Cir. 2026) (statutory wage and hour claims not delegated to arbitrator to decide based solely on general union grievance provision and reference to AAA Rules).
- *Gray v. University Hospital*, 2026 WL 2275036 (N.J. App.) (party waived right to challenge arbitration award by waiting until after the award was issued, where the arbitrator had made the disclosure at issue before the record was closed).
- *Credit Acceptance Corporation v. Stanley*, 2026 WL 1543073 (W. Va.) (lender did not waive arbitration right despite the fact that delayed counterclaim expanded the disputed issues, as litigation activity was limited, and the arbitration agreement expressly permitted the arbitration right to be invoked following filing of counterclaim).
- *Santana v. Shook, Hardy & Bacon*, 2026 WL 2212887 (S.D.N.Y.) (question whether staff agency's arbitration agreement extends to agency's law firm client is subject to delegation provision and for arbitrator to decide).
- *Neils Point, LLC v. Grady*, 359 A.3d 1019 (Me. 2026) (party waived challenge to agreement to arbitrate where it fully participated in the arbitration and filed its own arbitration demand).
- *Mundle v. Doxo, Inc.*, 2026 WL 1978065 (9th Cir.) (party waived right to arbitrate where it moved to dismiss, exchanged initial disclosures, agreed to an ESI protocol, and submitted a joint status and discovery plan to the court, and only asserted its right to arbitrate after motion to dismiss was denied).

- *Merit Holdings v. International Bank of Commerce*, 2026 WL 2999575 (Okla.) (fraudulent inducement claim for arbitrator to decide where challenge goes to the entire agreement and not the arbitration clause alone).
- *UHL v. Roblox Corp.*, 2026 WL 2607799 (9th Cir.) (waiver of arbitration right found where party moved to dismiss, removed the case to federal court, and litigated a remand motion over the course of 11 months before moving to compel arbitration).
- *Mitchell v. Lilac Solutions*, 122 Cal. App.5th 707 (Cal. App. 2026) (right to arbitrate waived where defendants answered the complaint and brought cross-complaints, engaged in discovery, and filed multiple procedural motions).
- *Woodfield v. Twitter, Inc.*, 2026 WL 2676008 (D. Del.) (waiver claim rejected where defendants' objection was not to arbitration but was to proceeding without an arbitration agreement signed by plaintiff designating JAMS as the ADR provider).

III. JURISDICTIONAL ISSUES: UNCONSCIONABILITY

Withdrawal of Arbitration Obligation During Pendency of Litigation Ruled Unconscionable. Valve, a video game publisher, required subscribers to arbitrate claims, and almost 5,000 claims were soon after filed against it. Valve changed course after these claims were filed and required users to litigate claims instead, including on a class basis. The new agreement included a merger clause, purporting to apply retroactively and effectively requiring users with pending arbitration claims to proceed in court instead. Valve moved for a preliminary injunction seeking to enjoin hundreds of arbitrations from proceeding. The court denied Valve's application, finding that its modified forum selection clauses were procedurally and substantively unconscionable under Washington law. While acknowledging that a party may seek to amend an agreement, "the law does not let a party – let alone the drafter – use the amendment power to strip away rights its customers have already exercised." The court found procedural unconscionability because Valve foreclosed meaningful choice for those with pending claims, who would have to accept the modified forum selection clause or forfeit access to their accounts and purchased games. "A consumer could keep the benefit of her purchases or keep the right to arbitrate, but not both." The court also pointed to the potential unethical actions of Valve's counsel in seeking to bypass the claimants' counsel to achieve its goal. The court noted that a "litigant who wants something from an opposing party who has counsel asks the lawyer. Valve did the opposite. It drafted an amendment designed to end those proceedings and pushed it past the lawyers, onto the screens of the consumers themselves, with a single button marked 'Agree'". The court also found the revised forum selection clause to be substantively unconscionable. As applied to these parties, "it terminates arbitrations they had already filed, unwinds the work and expense those proceedings demanded, and – for those nearest a final award or with an award in hand – threatens the awards themselves. Only one side loses anything of value in the trade." The court also observed that claimants

would risk the statute of limitations running on their claim without a finding that the actions were stayed, an uncertain result. Finally, the court gave Valve the back of its hand for claiming that restoring the user's litigation rights is a gift to consumers. "A party cannot strip a right, compel its adversaries to proceed without it, and then claim credit for handing it back on the condition that they abandon what they have already built." For these reasons, the court denied Valve's application for a preliminary injunction to stay the pending arbitrations. *Valve Corp. v. Abbruzzese*, 2026 WL 1481630 (W.D. Wash.), motion to certify appeal granted, 2026 WL 2198552 (W.D. Wash.). Cf. *Ridley v. Sweepsteaks, Ltd.*, 2026 WL 2201149 (E.D. Va.) (unilateral modification of provisions in an arbitration agreement is not per se unconscionable under Virginia law where clear and adequate notice was provided to users and an option to accept the terms was provided).

Arbitration Agreement Not Substantively Unconscionable. Robert Cocom, a former employee of ABM Aviation, filed a putative wage and hour class action, and ABM moved to compel arbitration of the claims under a mutual arbitration agreement ("MAA") the parties signed when Cocom was first employed by the company. The district court denied ABM's motion, finding that the parties' MAA was substantively and procedurally unconscionable. The Ninth Circuit reversed. The court emphasized that the MAA's scope was narrow as it was "limited to employment-related disputes" which "imposed [ ] inherent limitation[s]" on the MAA's duration and mutuality provision. As to duration, the court found that by limiting the scope to "employment-related claims," any covered claims would "stop accruing when the employment relationship ends." Therefore, "the MAA's duration is not indefinite and not substantively unconscionable." Similarly, the court found that the MAA's requirement that Cocom arbitrate claims against ABM's "past, present, and future parent(s), subsidiaries, affiliates, and/or their respective past, present, and future officers, directors, and/or employees," as well as ABM's "client(s) and/or vendor(s)" does not present a lack of mutuality rising to the level of substantive unconscionability. The court explained that, when read together with the narrower scope, this provision covers only claims Cocom may have against third parties in their role at ABM. The court therefore concluded that "the MAA's challenged provisions are not substantively unconscionable" and "any remaining provisions can be properly severed." Noting that "substantive unconscionability is dispositive," the court determined that it "need not address Cocom's arguments about procedural unconscionability." *Cocom v. ABM Aviation, Inc.*, 179 F.4th 1168 (9th Cir. 2026). See also *Phan v. Knight Sacramento SU, Inc.*, 121 Cal. App.5th 641 (2026) (agreement in employment context requiring arbitration of all claims between the parties, including beyond the employment relationship itself now and in the future, ruled overbroad and substantively unconscionable).

Implied Waiver of Arbitration Right Rejected. Plaintiffs rented a car from Budget and signed various documents, including one requiring arbitration of disputes. Plaintiffs later

sued for fraud. The complaint did not reference the documents requiring arbitration. Budget moved to dismiss but not to compel arbitration. The court partially granted the motion, and Budget answered, affirming its right to arbitrate. Depositions of plaintiffs were then taken. Budget moved to compel arbitration at that point. The district court denied the motion on implied waiver grounds, but the Third Circuit reversed. The court reasoned that Budget needed to take testimony regarding the plaintiffs' knowledge of the arbitration terms in the documents they signed. The court acknowledged that "if allegations on the face of a complaint provide a sufficient basis for a successful motion to compel arbitration, then a defendant who prolongs the litigation in court instead of moving to compel arbitration is at risk of impliedly waiving the ability to compel arbitration." In contrast, where, as in this case, "the assertion of the right to arbitrate against a party depends on the development of a factual record, the lack of a motion to compel arbitration before the development of a factual record needed for such a motion is not evidence of an intention to relinquish or abandon the right, and it would be difficult, if not impossible, to find an implied waiver of a reserved arbitration right before that factual issue had been resolved." On this basis, the court vacated the district court's ruling and remanded it for further consideration. *Parkin v. Avis Rent a Car System*, 188 F.4th 677 (3d Cir. 2026).

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- *Phan v. Knight Sacramento SU, Inc.*, 121 Cal. App.5th 641 (2026) (arbitration agreement in employment context that included employer's officers, agents, and third parties ruled substantively unconscionable as lacking mutuality).
- *Clemons v. Securitas Security Services USA*, 2026 WL 8573652 (Wash. App.) (arbitration provision ruled procedurally unconscionable where employer failed to show that employee was given reasonable opportunity to review the agreement, that he could opt out of the arbitration provision, or that by signing the agreement he did so voluntarily).
- *Village of Schaumburg, Illinois v. Permasteelisa, North America*, 186 F.4th 1017 (7th Cir. 2026) (party's failure to timely move to arbitrate not excused by waiver term in agreement which forgives "failure to insist" on performance of contract terms).
- *Merit Holdings v. International Bank of Commerce*, 2026 WL 2999575 (Ok.) (express provision in arbitration agreement that filing a motion to dismiss did not constitute waiver of the right to arbitrate was held not to be a waiver as no intentional relinquishment of that right was demonstrated).

IV. CHALLENGES RELATING TO AGREEMENT TO ARBITRATE

Third-Party Beneficiary Theory Not Applicable to Guest Uber Rider. Cheryl Walker ordered an Uber ride for her husband, Carroll, who did not have his own Uber account. Uber sent a text message with ride details that Carroll denied seeing. An accident occurred and Carroll was injured. The Walkers sued Uber, alleging negligence and product liability. Uber moved to compel arbitration, arguing that Carroll was a third-party beneficiary of Cheryl's account, which required arbitration. The district court denied Uber's motion to compel with respect to Carroll, and the D.C. Circuit affirmed, finding that Carroll had neither actual nor inquiry notice of the arbitration obligation. The court noted that Carroll was not "presented with a website- or app-based interface that contained a link to the Terms and stated that taking the ride would manifest his assent to them. Instead, Uber simply sent Carroll a text message with that information and anticipated he would see it before taking the ride." The court reasoned that Carroll could not be on inquiry notice based on a hyperlink he never saw. The court added "It is far from apparent that a reasonable person would expect to receive an unsolicited text message calling for them to examine voluminous contract terms in the short window before their ride arrives." The court also rejected Uber's argument that Carroll was a third-party beneficiary. Here, Carroll is not suing to enforce the terms of his wife's agreement, but rather "brings tort claims against Uber related to the operation and design of its app for drivers." Those claims are rooted in tort and not contract. "Carroll's claims could equally be brought if Cheryl had never used Uber's services and Carroll had been involved in the accident as a pedestrian. And because Carroll did not seek to stand in Cheryl's shoes to assert claims under her contract with Uber, the third-party beneficiary doctrine affords no basis to bind him to the terms of that agreement." *Walker v. Uber Technologies*, 2026 WL 2542599 (D.C. Cir.). See also *Srivastava v. BMW of North America*, 122 Cal. App.5th 944 (2026) (car manufacturer was third-party beneficiary of car lease between car lessee and dealership where manufacturer was expressly named in lease agreement as being subject to arbitration); *Zillow Group v. Midwest Real Estate Data*, 2026 WL 2720638 (N.D. Ill.) (entity expressly identified as a third-party beneficiary with authority to enforce the agreement may invoke arbitration clause in that same agreement); *UATP Management v. Geter*, 2026 WL 3090324 (Tex.) (non-signatories can compel arbitration as third-party beneficiaries where they are expressly included in the indemnity and release provisions of the applicable agreement).

Browsewrap Agreement Enforced. A browsewrap agreement forms when a website offers terms disclosed through a hyperlink and the user manifests assent by continuing to use the website. The Third Circuit has acknowledged that there is a "growing body of case law regarding whether the terms and conditions in browsewrap agreements are enforceable", often turning on whether the terms or a hyperlink to the terms are "reasonably conspicuous" on the webpage. Here, Swartz enrolled in a subscription streaming package

called the "Disney Bundle" through a Verizon promotion. To enroll, Swartz clicked a button labeled "Get it now," then was taken to the Activation Page, where he entered his email address and clicked a large button labeled "AGREE & CONTINUE." Immediately above the "AGREE & CONTINUE" button was a statement providing: "By clicking 'Agree & Continue,' you agree to our Subscriber Agreement and acknowledge that you have read our Privacy Policy" followed by blue and underlined hyperlinks to Disney's Privacy Policy and Subscriber Agreement, which contained an arbitration provision. The question for the court was whether Swartz had notice of and assented to the Subscription Agreement. The court began its analysis by reviewing the features of the web-based interface and found that "[t]he hyperlinks are readily apparent and conspicuous on the webpage because they are included in blue text and underlined." The court also found that there was legal significance to the statement on the activation page informing users that by clicking "Agree & Continue," they were agreeing to and acknowledging the Subscriber Agreement and Privacy Policy because it notified users of precisely "what action constitutes assent to the Subscriber Agreement and Privacy Policy." For these reasons, the court concluded that a "a reasonably prudent" user would understand that the Subscriber Agreement was connected to creating a Disney Bundle account. Thus, the court determined that "there is no genuine dispute of material fact regarding whether the parties entered into an enforceable arbitration agreement." *Swartz v. ESPN*, 2026 WL 1507403 (M.D. Pa). See also *Wolters v. Sweepsteaks Limited*, 2026 WL 1894240 (D. Minn.) (internet casino site failed to carry burden of demonstrating existence of arbitration agreement based on statement that the user would have had to agree to terms and conditions and by offering screenshot of webpage, without site's name); *Wilkins v. Cruise, LLC*, 121 Cal. App.5th 927 (2026) (court rejects complaint that viewing the terms of service on a cell phone was too difficult, finding complaint to be "one of impatience" rather than visual obscurity); *Pierce v. Empower Finance, Inc.*, 359 A. 3d 1 (Pa. Super. Ct. 2026) (online purchaser of amusement park season pass did not consent to arbitration, despite checking box acknowledging consent to park's terms and conditions, where the arbitration provision was "buried on" pages 7 and 8 of a 10-page agreement and was in small font); *Cox v. CoinMarketCap OpCo, LLC*, 2026 WL 2516566 (D. Ariz.) (terms of use containing an arbitration provision accessible by hyperlink ruled enforceable where hyperlink was in different color, the notice was clear and legible, and the hyperlink was contrasted against surrounding background); *Abbot v. Boom Shakalaka, Inc.,* 2026 WL 2139019 (N.D. Ill.) (terms of service provided reasonably conspicuous notice where the sign-up screen was uncluttered, the notice consisted of a single concise sentence which required no scrolling, the text was as legible as other text on the screen, and the hyperlinked text was underlined); *Baker v. Yahoo, Inc.*, 2026 WL 2516944 (S.D.N.Y.) (users of Yahoo's services agreed to arbitrate claims where they clicked "I accept" where terms of use were clearly and conspicuously hyperlinked, they were notified of mutual arbitration provision, and advised to read it carefully); *McCormack v. Dentsply Sirona, Inc.*, 2026, WL 1830935 (E.D. Pa.)

(plaintiff manifested assent to online order where she clicked box affirming her consent to defendant's terms, including arbitration provision, and was warned that she was waiving her jury trial right and the arbitration rules were displayed over three of the 13 pages of terms document); *Zink v. Belle Tire Distributors*, 2026 WL 2391211 (E.D. Mich.) (fact that employee scrolled through arbitration agreement in employer's system not sufficient by itself to evidence acceptance of its terms).

Non-Signatory Successor Can Invoke Acquired Entity's Terms of Service. Disney acquired fuboTV, whose subscribers had to agree to its terms of service, which required them to arbitrate disputes individually. The terms of service also included a provision which authorized fuboTV's "future affiliates" to invoke its rights under the terms of service. Plaintiffs brought a class action against Disney, alleging Sherman Act violations for allegedly suppressing competition for live TV streamed over the internet. Disney invoked fuboTV's terms of service and moved to compel arbitration and dismiss the class claims. The court granted Disney's motion, finding that Disney, a non-signatory, could invoke fuboTV's terms of service. The court emphasized that "Courts have repeatedly found future affiliate's provisions, or clauses granting rights to successors, are valid, despite the existence of some inherent uncertainty." The court also rejected plaintiffs' unconscionability arguments. For example, plaintiffs argued that the arbitration clause was of "near infinite scope" and could apply to any unrelated service or product. The court rejected this claim, finding that no such unrelated event was at issue here. The court also found the delegation clause to be clear and unmistakable and enforced it. In sum, the court rejected plaintiffs' unconscionability challenge and enforced Disney's right to invoke fuboTV's terms of service and compel arbitration of plaintiffs' claim. *Biddle v. The Walt Disney Co.*, 2026 WL 2654737 (N.D. Cal.).

Nonsignatory Not Bound by Equitable Estoppel. The plaintiffs were companies and individuals who sold used yachts through brokers. They filed a putative class action against certain yacht brokerage companies, broker associations, and multiple listing service ("MLS") operators alleging that defendants conspired, in violation of antitrust laws, to fix and inflate commissions that sellers were required to pay to buyers' brokers. YATCO, an MLS operator, moved independently of the other defendants to compel arbitration based on an arbitration clause in its Software as a Service ("SaaS") subscription agreement, which brokers were required to accept in order to list yachts on its platform. Although plaintiffs never signed the agreement, YATCO sought to bind them to it under equitable estoppel principles. The district court denied YATCO's motion and the Eleventh Circuit affirmed. Turning first to the legal framework, the court noted that Florida law governs the agreement. Florida law provides that "[a] signatory to a contract can enforce the terms of the contract against a nonsignatory under the doctrine of equitable estoppel only if (1) the nonsignatory is relying on the agreement to assert his claims and (2) the scope of the arbitration clause covers the

dispute." The court explained that "reliance on the contract requires that the nonsignatory must actually depend on the underlying contract to assert its claims." Here, the court observed, the SaaS agreement related only to the brokers' use of YATCO's platform and did not contain any provisions concerning broker commissions or the listing restrictions at issue in the plaintiffs' putative class action. Because the plaintiffs' claims arose under federal antitrust statutes and did not raise any issues "the resolution of which requires reference to or construction of some portion of the SaaS agreement," the court found that equitable estoppel did not apply. *Ya Mon Expeditions, LLC v. International Yacht Brokers Ass'n, Inc.*, 2026 WL 1678244 (11th Cir.). See also *Flota Petrolera Ecuatoriana v. Sudhaus*, 2026 WL 1483484 (E.D. Pa.) (non-signatories required to arbitrate claims where allegations in complaint demonstrate that their interests are intertwined with the agreement at issue).

Case Shorts

- *Trimble v. Entrata*, 184 F.4th 251 (4th Cir. 2026) (arbitration agreement ruled unenforceable where defendant reserved the right to unilaterally amend the agreement without limitation, rendering the arbitration right illusory).
- *Lopez v. Debevoise & Plimpton*, 2026 WL 2123273 (S.D.N.Y.) (arbitration provision and agreement to settle employment termination dispute have direct nexus to subsequent claim for reinstatement of employment and therefore did not constitute an "infinite arbitration clause" divorced from the claims underlying the parties' agreement).
- *Rai v. Ouraring, Inc.*, 2026 WL 2884384 (N.D. Cal.) (requirement that arbitration agreement be signed was not waived by plaintiff's continued employment under an employment agreement he signed where, in contrast, he did not sign the arbitration agreement).
- *Frisch v. FCA US, LLC*, 2026 WL 1831998 (E.D. Mich.) (car purchaser and lessees assented to the arbitration of their warranty-covered repairs by presenting vehicles for warranty-covered repairs and accepting use of rental cars while their cars were being serviced).
- *Chaikin v. TransUnion, LLC*, 2026 WL 1362169 (S.D.N.Y.) (lessee of car from dealer must arbitrate Fair Credit Reporting Act dispute with leasing company where leasing agreement with an arbitration agreement established the leasing company's essential role in the transaction).
- *Morales v. Superior Court of San Diego County*, 122 Cal. App.5th 239 (2026) (question of the scope of the commitment to arbitration is controlled by later agreement with integration clause, and not earlier offer and acceptance letter).
- *EAD Group, LLC v. Bulent Toros*, 2026 WL 2767069 (S.D.N.Y.) (claim of unclean hands does not negate enforceability of arbitration agreement as alleged fraudulent

conduct relates to underlying dispute and not the making of the arbitration agreement).

- *Rai v. Ouraring, Inc.*, 2026 WL 2884384 (N.D. Cal.) (defendant, who denied existence of enforceable agreement, cannot invoke equitable estoppel to compel arbitration because plaintiff sues for breach of that same agreement).
- *Rickes v. Thermo Fisher Scientific*, 2026 WL 2255243 (9th Cir.) (assent to arbitration absent where employer offered no evidence that employee viewed emails transmitting the ADR program, clicked on the hyperlink to the agreement, or otherwise interacted with the materials).
- *Morales v. Superior Court of San Diego County*, 122 Cal. App.5th 239 (2026) (arbitration agreement provided to unsophisticated newly-hired employee, who raised statutory discrimination claims, ruled ambiguous and unenforceable where it made disputes concerning an "aspect" of the employment agreement or acts that "violate" it).
- *Santana v. Shook, Hardy & Bacon*, 2026 WL 2212887 (S.D.N.Y.) (the applicability of an arbitration agreement from prior tenure with employer is question of arbitrability subject to delegation provision, referring such questions to the arbitrator).
- *Levin v. Prime Communications, Inc.*, 361 A.3d 643 (Pa. Sup. Ct. 2026) (whether plaintiff intended to be bound by signing electronically an agreement to arbitrate with employer is a question of fact for the trial court to decide on remand).
- *Ross v. Silver Oak Services Partners*, 2026 WL 1520743 (E.D.N.Y.) (evidence that electronic signature on arbitration agreement was submitted on the same hiring platform with conditional offer of employment established that plaintiff agreed to arbitrate).
- *Quinn, Racusin & Gazzola Chartered v. Pavich Law Group*, 362 A.3d 430 (D.C. App. 2026, as amended (Sept. 3, 2026) (disputes regarding allocation of contingency fees among prevailing counsel subject to arbitration agreement which applies to "any claim or dispute" among the law firms "arising out of or relating to" their agreement regarding "services to be performed under it, including any fees owed by any party").
- *Ross v. Silver Oak Services Partners*, 2026 WL 1520743 (E.D.N.Y.) (plaintiff's continued employment for two years following notice that she could not become employed without agreeing to arbitrate claims constituted assent to arbitration agreement).
- *Lavayen v. Lyft, Inc.*, 2026 WL 1493265 (S.D.N.Y.) (arbitration agreement in online Lyft terms of service sufficiently authenticated "through the declaration of its corporate representative who personally accessed Lyft's business records").
- *Metroplex Communications, Inc. v. Meta Platforms, Inc.*, 189 F.4th 616 (7th Cir. 2026) (unfair competition claims against Meta not sufficiently related to plaintiff's purchase of ads on Facebook to fall within arbitration provision in Meta's ad purchase agreement).

- *Zink v. Belle Tire Distributors*, 2026 WL 2391211 (E.D. Mich.) (employer failed to demonstrate acceptance of arbitration agreement where the stated manner of acceptance, including the employee's signature, was not complied with).
- *Miller v. Festival Fun Parks*, 2026, WL 2199005 (Pa. App.) (online registrant did not consent to arbitration under New Jersey law where website failed to conspicuously inform plaintiff that he was waiving his right to a jury trial).
- *In re Eletson Holdings*, 2026 WL 2225569 (S.D.N.Y.) (law firm's motion to compel RICO, fraud, and conspiracy claims based on arbitration provisions in engagement letters denied where the agreements were framed to resolve a narrow set of claims related to the payment of attorneys' fees and not to address substantive claims).
- *DavidR Quality Consulting v. Lachman Consultant Services*, 2026 WL 2568755 (E.D.N.Y.) (sole exception for limited injunctive relief did not override broad arbitration provision and therefore breach of contract, defamation, and wage and hour claims subject to arbitration).

V. CHALLENGES TO ARBITRATOR OR FORUM

Arbitrator's Blogs Rebutting Falsehoods Ruled Proper. Respondents engaged in a campaign to impugn the integrity of an arbitration panel, in particular, the Chair. Among the falsehoods publicized through the media, posts, and alleged anonymous sources was that the Chair received a $250,000 bribe when appointed to the panel – a complete falsehood. Respondents sought removal of the panel on bias grounds at various times, and in each instance the ICDR and the courts denied these applications. The panel refused to withdraw, noting that doing so would allow parties to force removal through their own misconduct. The Chair used a personal website to post various blogs around the time of, and after, the issuance of the final award. In those blogs, the Chair countered the defamatory falsehoods and, in doing so, identified the parties by name. The Chair wrote that he had concluded that "the arbitrator's duty of confidentiality is not so absolute that it prevents the arbitrator from speaking the truth about false accusations that have been and are being made, not only on the Internet for the venal and vengeful purpose of inflicting damage to the arbitrator's career and standing, but evidently to advance Respondents' resistance to the enforceability of our Awards." Respondents moved to vacate the award on bias grounds. The district court rejected respondents' claim, noting that by the time the Chair published his posts, "The five partial final awards already had been confirmed by this Court, the Tribunal's integrity repeatedly had been upheld by the ICDR, this Court, and the Second Circuit, and the Tribunal clearly already had decided all matters of substance addressed in the Final Award. The arbitration was over." The court found respondents' arguments to be "nothing more than the latest in a series of attempts to use their misconduct to force" the Chair to recuse himself. The court viewed the Chair's blogs as merely restating the tribunal's findings, noting that respondents' disinformation campaign

was part of the public record. The court reasoned that "the mere fact that an arbitrator may have formed an opinion about a party after years of litigation does not demonstrate partiality." Under the circumstances, the court found no wrongful or inappropriate antagonism by the Chair that would prevent a fair judgment on the merits. The court concluded that "It was perfectly reasonable in the circumstances for [the Chair] to publicly defend his professional reputation, in a measured way, around and after the conclusion of this fraught and, in many ways highly unusual arbitration." *Telecom Business Solution, LLC v. Terra Towers Corp.*, 2026 WL 1745998 (S.D.N.Y.).

Appellate Arbitration Procedures Not Available in Absence of All Parties' Consent. The parties' agreement provided that they reserved the right "to appeal from any award." An award was issued, and the losing party sought appellate arbitration review under the JAMS Optional Appeal Procedure. The prevailing party did not consent to appellate review, and the JAMS appellate arbitrators terminated the appeal because the two parties did not consent. The prevailing party moved to confirm the award. A Tennessee trial court granted the motion, and an appellate court affirmed. The appellate court reasoned that the parties had consented to JAMS' authority to resolve disputes regarding the scope of the arbitration agreement and the right to appeal from an award. The court further held that the parties consented to the appellate panel's authority to determine its own jurisdiction, which the parties' briefing reinforced. Based on this record, the appellate court concluded that "the trial court properly deferred to the JAMS panel's decision to dismiss" the appeal. *Springfield Health Services v. Sanderling Renal Services-USA*, 2026 WL 1847506 (Tenn. App.).

Case Shorts

- *Hogue v. Bidwill*, 2026 WL 2979517 (D. Ariz.) (referral to NFL commissioner of the question of whether a dispute was football-oriented, in which case the commissioner would serve as arbitrator, or was a non-football dispute, in which case it would be referred to JAMS, is not substantively unconscionable as the commissioner is not a party and was not shown to be inherently impartial in this circumstance).
- *Wright v. Goldstein*, 2026 WL 1827044 (Colo. App.) (objections to arbitrability made four days before the hearing constitute a timely challenge to arbitration under Colorado law).

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

Waiver of ERISA Right to Bring Representative Action Unenforceable. The employer's ERISA Plan contained a waiver barring class or representative actions. A class action was brought alleging that the employer and associated fiduciaries mismanaged the Plan by, among other ways, retaining underperforming investments. The employer moved to

compel arbitration. The district court denied the motion, and the majority of a Ninth Circuit panel affirmed. The court noted that plaintiff sought plan-wide relief under ERISA, such as restoration of profits to the plan for any breach and plan-wide equitable relief. In the majority's view, the waiver provision barring actions on a "representative basis" prevents plaintiff from effectively vindicating her rights and "from enforcing her substantive rights under ERISA because her breach-of-fiduciary-duty claims can only be brought in a representative capacity." For these reasons, the majority affirmed the district court's denial of the motion to dismiss. *Pover v. Capital Group Companies*, 183 F.4th 1132 (9th Cir. 2026).

Right to Compel Arbitration in Class Action Context Waived. Exploria was sued in a class action under the Telephone Consumer Protection Act. Over four years, the parties exchanged and reviewed pleadings, engaged in class-wide discovery, filed motions on the merits, and fully briefed a class certification motion. After the class was certified, Exploria added an arbitration affirmative defense to its third amended answer and sought to reopen discovery, arguing that as much as 70% of the class was subject to arbitration. The district court denied Exploria's request, finding that it had waived its right to the arbitration defense. On appeal, the Seventh Circuit affirmed. The court explained that "a defendant's pleadings, conduct during class-related discovery, and arguments in opposition to class certification are relevant to the waiver decision. Arbitration agreements with putative class members should be produced during class-related discovery and in opposition to class certification." The court observed that defendant's failure to seek discovery regarding the plaintiffs' arbitration agreement during discovery "shows a lack of diligence." The court ruled that at each stage of the litigation, Exploria's actions were inconsistent with its intent to arbitrate. It first asserted its arbitration defense in its third amended answer, engaged in two years of class-related discovery without seeking arbitration agreements from the plaintiffs, failed to raise its arbitration defense in opposing class certification, and only raised arbitration after filing various post-certification motions. For these reasons, the court affirmed the finding that Exploria waived its right to pursue arbitration. *Moore v. Club Exploria, LLC*, 187 F.4th 970 (7th Cir. 2026).

Case Shorts

- *Salvatora v. XTO Energy, Inc.*, 188 F.4th 666 (3d Cir. 2026) (right to arbitrate not waived against unnamed class members bound by arbitration provisions by litigating prior to class certification where class membership would not be determined until after opt-out period expired).
- *Kim v. Jump Trading, LLC*, 186 F.4th 909 (7th Cir. 2026) (investor's class action claims against non-signatory Jump Trading cannot be forced into arbitration based on an arbitration agreement signed with a crypto platform, as Jump Trading did not assert that it relied on representations by the investors).

VII. HEARING-RELATED ISSUES

Award Procured by Fraud Vacated. UNA and NBBI were competitors that administered prescription drug discount card programs. Catamaran had agreements with both UNA and NBBI. Catamaran and UNA entered into a new agreement that greatly increased the payments UNA would receive on claims it obtained, including claims from any business it acquired. Eight days later, UNA informed Catamaran that it had acquired NBBI and, therefore, NBBI's claims would be eligible for the higher rate. Catamaran and UNA then arbitrated, and UNA was awarded over $48 million. In a fraud action Catamaran brought against UNA, it was learned that UNA had not, in fact, acquired NBBI. Rather, UNA's chief legal officer downloaded a "purchase of a business" template from the internet six months after the alleged acquisition when UNA asked for proof of the deal. Other documents were produced in the litigation that UNA failed to produce in the arbitration, including: emails in which UNA and NBBI discussed the "story" it would tell Catamaran regarding the acquisition; communications between UNA and NBBI following NBBI's receipt of an arbitration subpoena, and; negotiation of agreements between NBBI and UNA following the alleged acquisition of NBBI. The court concluded that clear and convincing evidence supported a finding that UNA obtained the award by fraud. The court cited UNA's failure to produce relevant documents in the arbitration and that its principal "lied in the arbitration." The court held that the fraud was neither readily apparent or discoverable due to UNA's withholding of relevant documents and because of the false testimony. Catamaran's diligent efforts to discover the fraud were evidenced by its "making document requests of UNA, moving to compel production of UNA's correspondence with NBBI, and subpoenaing NBBI for its correspondence with UNA." The court reasoned that vacatur was warranted as "UNA's fraud is material because it shows that UNA and NBBI coordinated to deceive Catamaran that UNA had acquired NBBI's Rx business." The court vacated the award in full, including $17 million that was based on a separate agreement, reasoning that "because of UNA's perjury and concealing of documents, the arbitrator had an incomplete picture of the parties' conduct. According to the court, UNA's fraud infected the entire arbitration proceeding. Attempting to separate a certain dollar amount of the award untainted by UNA's misconduct would therefore be futile." For these reasons, the court deemed the award fraudulently obtained and vacated it. *OptumRx v. United Networks of America*, 2026 WL 2969743 (M.D. Fla.).

Case Shorts

- *Industria del Hierro, S.A. v. UOP, LLC*, 2026 WL 2957807 (S.D.N.Y.) (claim that panel applied incorrect law in secret based on a passing remark by the panel chair is rejected in the face of what the panel actually decided and the law it applied which was proper).

- *Navatek Capital v. Kao*, 2026 WL 2935548 (Haw.) (respondent's refusal to testify on Fifth Amendment grounds not basis for vacatur where claimant demonstrated "extremely strong interests in proceeding expeditiously with arbitration" after four adjournments).
- *Lok v. Experian Information Solutions*, 2026 WL 1694188 (S.D.N.Y.) (arbitrator did not manifestly disregard or willfully flout the law by requiring corroboration of emotional distress damages).
- *Sun Pharmaceutical Industries v. Cipher Pharmaceuticals, Inc.*, 2026 WL 2445031 (S.D.N.Y.) (arbitrator's review of extrinsic evidence not grounds for vacatur where arbitrator found the agreement unambiguous and the extrinsic evidence related to challenge to that finding).
- *DM Construtora de Obras Limitada v. Tupi B.V.*, 2026 WL 1831400 (S.D.N.Y.) (fact that panel may have incorporated "arguments of one party or the other verbatim into an Award does not constitute misconduct [just as busy] courts, including this one, have been known to incorporate portions of a party's brief into their decisions when they find the arguments made therein to be meritorious and they cannot think of a better way to phrase them").
- *Austerlitz v. Austerlitz*, 89 Misc.3d 1239(A) (N.Y. Sup. Ct. 2026) (affirmation offered by Rabbinical Court panelist in support of motion to confirm award was ruled inadmissible on *functus officio* grounds).
- *Moore v. WTA Tour*, 2026 WL 2806933 (S.D.N.Y.) (arbitrator appropriately applied New York State's collateral estoppel principles to ruling issued by the Court of Arbitration for Sports and was not required to relitigate the underlying merits).
- *Lin v. Trust Wallet, Inc.*, 2026 WL 2654843 (S.D.N.Y.) (challenge to cost of arbitrating of delegation issue rejected where plaintiff failed to demonstrate that the estimated cost of $4,000 to $6,000 to resolve that issue was prohibitively expensive).
- *Industria del Hierro, S.A. v. UOP, LLC*, 2026 WL 2957807 (S.D.N.Y.) (claim that the ICC improperly extended time to issue award rejected where no objections were made at the time that the extensions were granted).

VIII. CHALLENGES TO AND CONFIRMATION OF AWARDS

Public Policy Did Not Bar Rehiring of Knife-Wielding Co-Worker. A hotel worker frightened a co-worker when he played with a knife, looked at the co-worker with a "goofy" expression, and then returned the knife to his pocket. The hotel called the police and then fired the worker for violating its nonviolence policies. The union challenged the determination, and an arbitrator reinstated the worker and imposed a 10-day suspension instead. The district court confirmed the award and the Seventh Circuit affirmed. The court emphasized that arbitrators are agents of the parties entitled to do what the parties

themselves can do. "Arbitrators cannot direct the parties to violate a statute or transgress the rights of non-parties; arbitrators cannot violate the terms of the contracts they construe; but subject to these limitations, arbitrators may do what the parties themselves may do. It follows that a hotel with the legal right to keep a worker on the payroll cannot complain when an arbitrator does exactly that." The court noted that the worker was neither charged with a crime nor issued a ticket by the police. The knife in question, however, exceeded the blade length permitted by law, but that law imposed no mandatory fine or imprisonment. The court emphasized that the public policy against violence in the workplace is directed against those who employ violence, not against employers trying to choose the best methods of curtailing violence." Rather, public policy addresses how employers should respond to workplace violence, which was the question at issue. For these reasons, the court affirmed the district court ruling and confirmed the award. *UNITE HERE Local 1 v. Magnificent Mile Hotel Management, LLC*, 177 F.4th 901 (7th Cir. 2026).

Award Remanded to Arbitrator to Explain Damages. Here, Amazon and PandaVida agreed to arbitrate disputes under the terms of a business services agreement ("BSA"). A dispute arose between the parties which they resolved on their own, without the need for arbitration. The parties memorialized that agreement in a Settlement Agreement that did not provide for arbitration. A further dispute occurred, and the parties brought claims against each other under the BSA. Amazon also sought relief under the Settlement Agreement, which PandaVida challenged on jurisdictional grounds. The arbitrator found in favor of Amazon on both claims brought under the BSA as well as under the Settlement Agreement and awarded damages on both sets of claims. PandaVida moved to vacate the award, arguing that the arbitrator exceeded his authority. The court agreed, ruling that the arbitrator exceeded his authority by addressing liability issues under the Settlement Agreement. The court upheld the arbitrator's award under the BSA, finding that PandaVida waived any challenge to the arbitrator's authority under the BSA. "Although PandaVida initiated an arbitration asserting breaches of the BSA, its conduct during the arbitration did not imply that it also sought to arbitrate the issue of breach of the Settlement Agreement." The court found that the Settlement Agreement superseded the BSA relating to any dispute arising under the Settlement Agreement. "By determining PandaVida's liability for breach of the Settlement Agreement, the Arbitrator resolved the claim that arose under the Settlement Agreement. Therefore, in making the arbitral award, the Arbitrator reached an issue that he was 'clearly prohibited' from reaching by operation of the mandatory forum selection clause in the Settlement Agreement." As the arbitrator did not distinguish between damages awardable to Amazon under the BSA versus those related to claims under the Settlement Agreement, the court concluded that it was "unable to determine whether and to what extent the damages award should be vacated", and as a result the court ordered the parties to meet and confer "on whether it is appropriate to remand the

award to the arbitrator." *PandaVida, Inc. v. Amazon.com Services*, 2026 WL 1970591 (S.D.N.Y.).

Case Shorts

- *Valve Corp. v. Graber*, 2026 WL 2137286 (W.D. Wash.) (award vacated on due process grounds where arbitrator awarded fees and costs based on time records and documents reviewed in camera which were not shared with the opposing party).
- *Dixon Law v. Powell*, 2026 WL 2593315 (D.D.C.) (vacatur not required based on arbitrator's failure to disclose that during proceedings, she and an expert witness appearing in the case, both of whom were retired bankruptcy judges whose prior contacts were disclosed, agreed to sign an amicus brief being submitted to the Supreme Court).
- *Lok v. Experian Information Solutions*, 2026 WL 1694188 (S.D.N.Y.) (arbitrator's failure to award actual damages to prevailing party did not manifestly disregard the law where proof of such damages was found to be lacking).
- *Truck Insurance Exchange v. Rosen*, 2026 WL 2076027 (S.D.N.Y.) (hold harmless agreement by parties not to sue based on arbitrators' disclosures or alleged biases barred suit seeking removal of arbitrator who served as counsel for moving party over 20 years earlier providing advice on key terms of reinsurance that were at issue in this arbitration).
- *DM Construtora de Obras Limitada v. Tupi B.V.*, 2026 WL 1831400 (S.D.N.Y.) (attorneys' fees awarded based on frivolous motion to vacate found to be "nothing more than a 'woebegone' and meritless attempt to appeal the Tribunal's decision").
- *Cannistraro v. Columbia Construction Co.*, 497 Mass. 732 (2026) (arbitrator's ruling that failure to provide statutorily required good faith certification did not preclude recoupment counterclaim was not subject to vacatur on exceeding authority grounds where the ruling was not expressly prohibited by statute).
- *1199 SEIU United Healthcare Workers East v. Chinese-American Planning Council Home Attendant Program*, 182 F.4th 67 (2d Cir. 2026) (arbitrator exceeded authority by requiring former union members to arbitrate statutory wage and hour claims based on subsequent memorandum of understanding subjecting such claims to grievance arbitration process).
- *RV Holdings 4, LLC v. Standard Fiber Investors*, 594 P.3d 513 (Utah 2026) (arbitrator exceeded authority by finding breach of subsequent agreement between the parties rather than the breach of contract at issue).
- *Consorcio Cementero del Sur S.A. v. GCC*, 2026 WL 2124877 (S.D.N.Y.) (award may not be vacated where moving party agreed during the arbitration that the panel had

discretion not to apply governing statute of limitations and then the panel exercised its discretion not to apply the limitations period).

- *Wynn-Williams v. Meta Platforms, Inc.*, 2026 WL 2621253 (N.D. Cal.) (motion to vacate interim award untimely where filed more than 90 days after issuance of award and the final award was not yet issued).
- *Lok v. Experian Information Solutions*, 2026 WL 1694188 (S.D.N.Y.) (manifest disregard is a judicial gloss on grounds for vacatur under the FAA rather than an independent basis to challenge arbitration awards).
- *Compeer Financial v. Corporate America Lending*, 180 F.4th 1119 (8th Cir. 2026) (partial final award that completely determined liability and damages on claim independent of remaining claims is final and can be confirmed).
- *Wolters v. Sweepsteaks Limited*, 2026 WL 1894240 (D. Minn.) (motion to compel denied where arbitration provision was on a crypto gambling site which violates Minnesota public policy and therefore cannot be enforced).
- *Compeer Financial v. Corporate America Lending*, 180 F.4th 1119 (8th Cir. 2026) (public policy challenge, even if viable under the FAA, rejected as arbitration panel offered additional grounds not subject to such challenge).
- *Gray v. University Hospital*, 2026 WL 2275036 (N.J. App.) (motion to vacate on fraud and impartiality grounds rejected where arbitrator was corporate counsel for entity, not a party to the arbitration, which was sued by plaintiff's counsel over 20 years before and no evidence that the arbitrator was involved in that litigation).
- *JMB Shipping ATB 205 v. UNICO Marine Services*, 2026 WL 1878126 (S.D.N.Y.) (conclusory assertions that the arbitration panel treated parties disparately when interpreting the agreement are insufficient to support a finding of evident partiality).
- *JMB Shipping ATB 205 v. UNICO Marine Services*, 2026 WL 1878126 (S.D.N.Y.) (arbitrator's partial dissent "is evidence that the panel was engaging in contract construction").
- *Enka Renewables v. Georgia*, 2026 WL 2676739 (D. D.C.) (party that did not object to a proposal by an ICC arbitration panel, which was implemented, that the experts submit a joint expert report without input by the parties may not "cry foul" and deny confirmation of award).
- *Austerlitz v. Austerlitz*, 89 Misc.3d 1239(A) (N.Y. Sup. Ct. 2026) (award that determined party's percentage interest in property is deemed final despite the fact that the tax reimbursement obligation of counterclaimant was not determined).

IX. ADR – GENERAL

Mediated Settlement Agreement Not Enforced Where It Lacks Sufficient Specificity. Cross and Albright were neighboring landowners in Wyoming. Various disputes between them arose. Disputed issues included access to ditches on their properties and the visibility of storage sites for garbage and machinery. In mediation, the parties reached a global settlement, subject to entering into a formal settlement agreement. The parties disagreed on how to implement the terms of the mediated settlement agreement, and each petitioned the trial court to confirm its interpretation. The trial court declined to enforce the mediated agreement, finding that it could not discern its actual terms. The Wyoming Supreme Court affirmed. The Court acknowledged that rejecting agreements for indefiniteness is disfavored, but the agreement's essential terms must still be ascertainable. The Court pointed out that the agreement here "did not contain the words 'easement' or 'restrictive covenant' [and] contained no terms specifying how access and the visual storage restriction were to be implemented." While the course of dealing may in appropriate circumstances provide insight into the parties' intent, that was not the case here. Other open issues included whether any restrictive covenant ran with the land or was a personal obligation, and how the easement would be recorded. For these reasons, the court concluded, "Given the disagreement and that the Original Agreement included a provision that a formal global settlement would be drafted within 30 days, it appears at most that the parties had an agreement to agree at some point in the future." *Cross v. Albright*, 592 P.3d 1092 (Wyo. 2026).

Video Recital of Mediated Settlement Terms Enforced. The parties reached a settlement in mediation, and the mediator recited the settlement terms on a video call. The parties verbally confirmed their agreement, but they never put the settlement terms in writing. The parties initially complied with the settlement terms, but a dispute later arose. A court action followed. The Kentucky Supreme Court, affirming the lower courts' rulings, concluded that the oral settlement agreement was enforceable. The Court addressed a challenge based on the Statute of Frauds. The Court noted that Kentucky law defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." The Court concluded that an electronic record "is tantamount to a writing under the Statute of Frauds" and that, under Kentucky law, the parties' "unequivocal oral affirmation to the specific terms of the mediated settlement constitutes an electronic signature." The Court also found the disputed terms to be clear and unambiguous and that "the recorded settlement agreement in the present matter reflected the parties' mutual assent to complete terms with no reference to the necessity of future negotiations or agreements." For these reasons, the Court enforced the mediated settlement terms as reflected in the Zoom recording with the mediator. *Dotson v. CIA Drug, LLC*, 2026 WL 2901948 (Ky.).

Oral Agreement at Mediation Confirmed. A False Claims Act case brought by the U.S. government against Dr. Ma went to mediation. At mediation, an oral agreement was reached by which: (1) Dr. Ma would pay $2.3 million to the government over 42 months, (2) an initial payment of $100,000 would be made, (3) all claims would be dismissed against Dr. Ma upon receipt of the settlement payments, and (4) Dr. Ma would attempt to sell certain properties and the government reserved the right to place liens on those properties. The government filed a notice of settlement with the court and forwarded a written agreement for Dr. Ma's signature, which was never returned. The government then moved to enforce the written settlement agreement, and Dr. Ma's new counsel opposed the application, claiming that Dr. Ma never agreed to the settlement terms and believed them to be just general parameters for a future deal. The district court concluded that the parties orally agreed to the agreement's material terms and that the standard terms in the written agreement were immaterial. The Fifth Circuit affirmed, noting that in prior cases it had confirmed settlements where the "material terms may be quite sparse." The court ruled that the district court did not abuse its discretion in concluding that the agreed-upon terms constituted the "essential parameters to create a deal." The court found as immaterial such standard provisions as: the date upon which the agreement became effective, the government's right to pursue criminal and tax claims against Dr. Ma, as the settlement only applied to civil claims against him, and waiver by Dr. Ma of certain defenses should the settlement fall through, most notably in the bankruptcy context. The Fifth Circuit agreed with the district court that "the fact that the parties did not discuss the details fleshed out in the written agreement at the mediation to be an indication that the parties did not consider them material." The district court and the Fifth Circuit both acknowledged that Dr. Ma and his counsel may have believed that the agreement was not final until a written agreement was signed but concluded that they were "mistaken." Rather, "the government's intent to be bound, combined with the party's post-mediation conduct, confirmed the agreement's finality and binding nature." For these reasons, the Fifth Circuit concluded that the district court did not abuse its discretion in concluding that the oral agreement reached at the mediation was enforceable. *United States v. Ma*, 178 F.4th 884 (5th Cir. 2026).

Case Shorts

- *Nippon Yusen Kabushiki Kaisha v. X-Coal Energy and Resources*, 2026 WL 1361681 (S.D.N.Y.) (attorneys' fees awarded against a party subject to an enforceable arbitration agreement who refused to arbitrate and failed to respond to a motion to compel).
- *Jacobson v. Live Nation Entertainment*, 2026, WL 1859099 (S.D.N.Y.) (amended New ERA arbitration rules found not to favor respondent and, consequently, motion to compel granted).

- *Quinn, Racusin & Gazzola Chartered v. Pavich Law Group*, 362 A.3d 430 (D.C. App. 2026, as amended (Sept. 3, 2026) (party's demand that an arbitration clause be included in an agreement coupled with threat to not sign the agreement or, in the alternative, to require a higher contingency fee in lieu of arbitration, did not constitute duress or tortious behavior).
- *In re Whaleco/Potter Handy Data Privacy Mass Actions*, 2026 WL 2655159 (E.D.N.Y.) (attorneys' fees awarded on successful motion to compel, including for the preceding motions to remove and transfer).

X. COLLECTIVE BARGAINING SETTING

Labor Award Vacated Where it Directly Contradicts Statute. COVID resulted in the closure of New Jersey schools. The collective bargaining agreement for custodial workers applicable here provided that employees were to be paid 250% of their regular salary for in-person work when the schools were closed for "emergencies." The New Jersey Legislature enacted legislation requiring union employees to be paid their full salary when schools are closed due to the COVID emergency. The school board, which had originally paid custodians performing in-person work 250% of their salaries, reduced custodians' wages to their normal salaries after the legislation took effect. The union grieved, and the arbitrator upheld the grievance and required the school board to pay the custodians 250% of their salaries under the collective bargaining agreement. The school board moved to vacate the award, and the New Jersey Supreme Court ruled for the school board. The Court acknowledged that New Jersey law upholds labor awards where the arbitrator's findings are "reasonably debatable," but reasoned that this could not be the case when, as here, the award directly contradicted a law or public policy. On this basis, the court vacated the arbitrator's award. *East Orange Educational Support v. East Orange Board of Education*, 265 N.J. 167 (2026).

Award Interpreting Interaction Between CBA and FMLA Reinstated. The union brought an arbitration alleging that the school district violated the collective bargaining agreement by refusing to allow a teacher to choose whether to use her FMLA leave or her personal leave. In particular, the school district required her to use FMLA leave, even though the teacher preferred to use her available paid leave. The arbitrator ruled for the teacher, citing the school district's stated leave policies. The school district moved to vacate the award, arguing that the arbitrator exceeded his authority. The trial court agreed and vacated the award. The Pennsylvania appeals court reversed. The appellate court reasoned that the arbitrator was entitled to interpret a statute in conjunction with the collective bargaining agreement's terms as long as the award drew its essence from that agreement. "Judicial review of that interpretation is limited to application of the essence test unless the interpretation contradicts well-established case law/clear precedent." Because no well-

established precedent addressed the relevant FMLA provision, the appellate court concluded that "the arbitrator's determination that the School District violated the CBA by denying the employee the ability to choose whether or not to use FMLA leave time drew its essence from the CBA." *Freeport Area School District v. Freeport Education Association*, 2026 WL 2051895 (Pa. App.).

Remedy Awarded Drew its Essence from Collective Bargaining Agreement. The hospital here failed to maintain the agreed-upon nurses' staffing levels. An arbitration ensued, and the arbitrator agreed with the union that the parties violated their agreement and awarded a monetary remedy, but less than the union requested. Specifically, the arbitrator awarded the nurses the amount the hospital would have paid to retain additional nurses to cover the shifts. The arbitrator reasoned that the award constituted "compensation of the nurses for the adverse conditions under which they worked, and not a penalty to the employer." The hospital moved to vacate, arguing that the arbitrator exceeded her authority and violated the collective bargaining agreement by issuing a punitive award. The court denied the motion to vacate and confirmed the award. The court reasoned that the arbitrator acted within her authority under the agreement's remedial authority provision, which included issuing monetary awards for contract breaches. The court rejected the hospital's contention that the arbitrator violated the agreement's zipper clause by adding to the agreed-upon terms. "While the Arbitrator used the parties' agreed-upon wage rate as a benchmark to calculate the cost of working in an understaffed environment, the Arbitrator did not permanently adjust wages in the contract or derive a new contract term, as the Hospital contends. Rather, the Arbitrator issued a temporary remedy for the Hospital's breach of the Agreement which drew upon the Agreement itself." In sum, the court concluded that the award drew its essence from the parties' agreement and was confirmed. *New York Presbyterian Hospital v. New York State Nurses Association*, 180 F.4th 482 (2d Cir. 2026).

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- *1199 SEIU United Healthcare Workers East v. Chinese-American Planning Council Home Attendant Program*, 182 F.4th 67 (2d Cir. 2026) (former union members had standing to intervene in action confirming labor arbitration award as they had direct, substantial, and legally protectable interest in arbitration addressing their wage and hour claims for period in which they were no longer members of the union).
- *President and Fellows of Harvard College v. Harvard Graduate Students Union*, 2026 WL 2921438 (1st Cir.) (issue of whether doctoral students were properly included in bargaining unit was arbitrable and subject to collective bargaining agreement).
- *Andrade v. Manhattan Painting & Decorating Corp.*, 2026 WL 2076001 (S.D.N.Y.) (statutory wage and hour claims are not subject to union contract grievance

procedures where it lacked clear and unambiguous referral of such claims to arbitration).

- *Las Vegas Police Protective Association v. City of Las Vegas*, 590 P.3d 914 (Nev. 2026) (unless a collective bargaining agreement provides otherwise, the arbitrator determines the format of proceedings and related issues, not the employer).
- *Elmar Hotel Management v. UNITE HERE Local 1*, 182 F.4th 609 (7th Cir. 2026) (arbitrator's finding that a vacant hotel used at the city's request to house migrants was bound by the collective bargaining agreement applicable to the hotel was upheld as drawing its essence from the agreement).
- *County Concrete Corporation v. International Brotherhood of Teamsters*, 2026 WL 2823600 (D. N.J.) (arbitrator's holding that marijuana odor and a positive drug test were not a sufficient basis for termination of the grievant drew its essence from the collective bargaining agreement, where use under the policy must have been on the employer's property).
- *County Concrete Corporation v. International Brotherhood of Teamsters*, 2026 WL 2823600 (D. N.J.) (the differences between the Labor Management Relations Act and the Federal Arbitration Act go to formalities and most often are of little consequence).

XI. NEWS AND DEVELOPMENTS

Supreme Court Vacates Award Based on *Jules v. Andre Balazs* Ruling. Relying on the Supreme Court's *Badgerow v. Walters* decision, the Third Circuit concluded it lacked jurisdiction to compel arbitration because no independent basis existed to exercise jurisdiction over a Section 1782 suit. The district court had previously granted an application under Section 1782 for discovery, but it and the Third Circuit concluded under *Badgerow* that the court did not have independent jurisdiction to compel arbitration. The Supreme Court granted *certiorari* and vacated the decision. In doing so, the Court instructed the Third Circuit to reconsider its decision in light of Jules v. Andre Balazs. *Burford German Funding v. Financialright Claims GMBH*, 2026 WL 3116575 (U.S. October 19, 2022).

Arbitrators in Connecticut Required to Be Admitted in State: An arbitrator hearing a case in Connecticut must be admitted to the Connecticut bar, absent a waiver by the parties. A party objecting to an arbitrator who is not admitted must do so within 14 days of the arbitrator's appointment. Any waiver under this new law, which took effect on July 1, 2026, must be jointly agreed to and memorialized in writing.

New York Sues Online ADR Service for Fraud. New York sued Mediation and Civil Arbitration, Inc., d/b/a RapidRuling, alleging fraud, bias, and violation of various state consumer protection laws. New York claims that RapidRuling partnered with LCF Group, a

merchant cash advance lender, to create a process that favors quick default awards against merchants. According to the complaint, RapidRuling arbitrators, rather than being independent and impartial, are trained to produce "rapid" rulings that reject merchant defenses in favor of the lenders. New York contends that RapidRuling and LCF are "in cahoots" to "share a brutally efficient tool for extracting fast judgments against out-of-state merchants." *State of New York v. Mediation and Civil Arbitration, Inc.*, N.Y. Sup. Ct., N.Y. Cty. Index No. 452192/2026.

California Adopts FAA Exemptions. A new California statute incorporates into the California Arbitration Act the same exemptions and limitations present in the Federal Arbitration Act. The statute expressly incorporates the FAA's transportation exemption and the provisions of the Ending Forced Arbitration Act. The new law takes effect on January 1, 2027.

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