FELIU NEUTRAL SERVICES LLC

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

Feliu Case Summaries:

February 2026

Contents

I. <u>JURISDICTIONAL ISSUES: GENERAL</u>

<u>Res Judicata Applies to Confirmed Arbitration Award</u>. Homeowners and their general contractor brought an arbitration against Design Gaps, which was retained to renovate cabinets in the homeowner's home. Design Gaps attempted to bring in the entity, Distinctive Design, and its owner, who completed the cabinetry, but the arbitrator declined to implead them as they were not signatories to the agreement containing the arbitration provision. The arbitrator found against Design Gaps, and the award was confirmed. Design Gaps brought a federal action against the homeowners, the general contractor, and Distinctive Design, alleging defamation and copyright infringement, among other claims. The district court dismissed their claims, principally on res judicata and collateral estoppel grounds based on the arbitrator's findings. The Fourth Circuit affirmed. The court held that res judicata precludes claims that could have been brought in a prior proceeding and that Design Gaps failed to assert its defamation claims before the arbitrator, a failure it could have remedied. The court denied Design Gaps' claims against Distinctive Design on the ground of collateral estoppel. In doing so, the court noted that the arbitrator allowed sufficient discovery from Distinctive Design to allow Design Gap to litigate its claims adequately. The court further found that by finding that the homeowner's and general contractor did not violate Design Gaps' copyright, "the arbitrator directly and necessarily decided Design Gaps' copyright and related claims against Distinctive Design." The court reasoned that for "collateral estoppel purposes, the arbitrator determined the issues underlying Design Gaps' claims against Distinctive Design and Design Gaps had a full and fair opportunity to litigate these issues in arbitration." *Design Gaps, Inc. v. Distinctive Design and Constructio*n, 162 F.4th 452 (4th Cir. 2025). <u>See</u> <u>also</u> *Barron v. Shapiro & Associates*, 2026 WL 251659 (2d Cir.) (principles of judicial estoppel preclude party from rejecting prior position when moving to compel arbitration by claiming, following issuance of arbitration award, that certain claim was not subject to arbitration).

<u>FAA Transportation Exemption Applied to Drivers Who Own Business</u>. 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 classified as employees and that the distribution agreements were not, in the traditional sense, 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). See also *Clinton v. Amazon Logistics, Inc.*, 2026 WL 49456 (Cal. App.) (last mile Amazon drivers fall within FAA transportation exemption as without their picking up and delivering packages from local warehouses, the interstate delivery of the packages would be incomplete).

Amendment of Claim Alleging Continuing Harassment Past Effective Date of EFAA Upheld. The Ending Forced Arbitration Act generally renders arbitration agreements unenforceable, at the plaintiff's election, in sexual assault and sexual harassment cases that arise or accrue on or after March 3, 2022, the EFAA's effective date. The lawsuit here was filed by plaintiff in 2024 and asserted several claims against SpaceX, including a claim for sexual harassment. The sexual harassment allegations date back as far as 2017, but the question before the court was "when did they end?" Plaintiff's original complaint alleged that the harassment continued until her supervisor was terminated from SpaceX sometime in 2022. Her first amended complaint (the "FAC") specified that the supervisor's termination of employment was on June 15, 2022, and included additional allegations of sexual harassment that occurred between March 7 and 11, 2022. SpaceX moved to compel arbitration, contending that the amended complaint was a "sham pleading" intended to avoid arbitration. The court disagreed, however, noting that the original complaint maintained that the sexual harassment continued until sometime in 2022 and observed that "the FAC's more detailed allegations" about the exact date her supervisor's employment ended as well as her allegations of continued violations between March 7-11, 2022, "are not inconsistent with any allegations in the original complaint." As such, the court concluded that the trial court did not err in "relying on allegations in the FAC to support its finding that [plaintiff's] claims of sexual harassment accrued after the EFAA's enactment under the continuing violation doctrine." *Dopak v. Space Exploration Technologies Corp.*, 2025 WL 3077793 (Cal. App.). See also *Mera v. SA Hospitality Group*, 2025 WL 3202080 (S.D.N.Y) (Ending Forced Arbitration Act applies to sex-orientation harassment claim and therefore the entire case, including wage and hour claims, is barred from arbitration and must proceed in court); *Quilala v. Securitas Security Services, USA*, 117 Cal. App.5th 75 (2025) (Ending Forced Arbitration Act requires that the entire case be removed from arbitration, and not just a sexual harassment claim that falls within the statute's ambit).

Case Shorts

- *Lanesborough 2000, v. Nextres, LLC*, 2026 WL 318235 (2d Cir.) (contract language limiting right to appeal found not to preclude appellate review where terms were found not to be "clear and unambiguous").
- *Design Gaps, Inc. v. Distinctive Design and Constructio*n, 162 F.4th 452 (4th Cir. 2025) (federal court must apply res judicata principles to arbitration award confirmed by state court in the same way as if confirmation was by a federal court).
- *Wiggins v. Southern Securities Group*, 424 So.3d 254 (Miss. 2025) (refusal to dissolve preliminary injunction enforcing non-compete provision based on term in operating agreement requiring mediation and arbitration of disputes upheld where arbitration provision was unclear and inconsistent and enforcement of non-compete demanded immediate injunctive relief).
- *APM Terminals Mobile v. International Longshoremen Association*, 159 F.4th 869 (11th Cir. 2025) (collateral order doctrine may not be invoked to allow appellate review of order denying motion to compel).
- *Berkeley Research Group v. Southern Advanced Materials*, 2026 WL 181929 (Tenn.) (Tennessee courts lack subject matter jurisdiction to confirm arbitration award where agreement required arbitration to occur in Pennsylvania and, therefore, under the Uniform Arbitration Act, the court did not have jurisdiction over the arbitration as it was not held in Tennessee).
- *United States Steel Corp. v. Algoma Steel, Inc.*, 2025 WL 3558136 (W.D. Pa.) (arbitrator to decide whether carve-out for injunctive relief allows Canadian steel company to litigate breach of contract claim based on President Trump's tariff on Canadian steel).
- *Williams v. Shapiro*, 161 F.4th 1313 (11th Cir. 2025) (entire arbitration clause ruled null and void where it constitutes impermissible prospective waiver of ERISA rights).
- *Parrott v. International Bancshares Corp.*, 2026 WL 364324 (5th Cir.) (arbitration provision in employee benefit plan that bars representative actions violates ERISA and is not enforceable).
- *Williams v. Shapiro*, 161 F.4th 1313 (11th Cir. 2025) (arbitration provision in ESOP plan preventing plan participants from obtaining relief in representative capacity was

unenforceable as constituting an impermissible prospective waiver of statutory rights under ERISA).

- *LaPaglia v. Valve Corp.*, 2025 WL 3527053 (S.D. Cal.) (diversity jurisdiction not established on motion to vacate based on claim that attorneys' fees would exceed $75,000 if plaintiff would prevail upon rehearing of arbitration).
- *Walker Specialty Construction v. Board of Trustees*, 163 F.4th 1218 (9th Cir. 2026) (arbitration award assessing withdrawal liability against construction company vacated based on finding that the asbestos abatement work falls within "building and construction" exception in the Multiemployer Pension Plan Amendments Act, which bars withdrawal liability claim).
- *Fishman v. Fishman*, Index no. 3695/2019 E (Sup. Ct. Bx. Cty.) (interim award issued by rabbinical court ruled to be final and therefore subject to judicial enforcement as rabbinical court ordered the issuance of a "Get" terminating a marriage under Jewish law "which the Court is unable to effectuate let alone direct").
- *Brooks v. WarnerMedia Direct, LLC*, 2025 WL 3073839 (S.D.N.Y.) (court cannot compel party to pay cost of arbitration as that is a procedural issue entrusted to arbitrator to resolve).
- *Satoriagricultural Consultancy v. T&R Productions*, 2026 WL 63330 (D.D.C.) (awards in favor of Russian-owned media company, which was sanctioned by the U.S. for interference with its elections, and which were assigned to a third party, enforced, as the sanctioned party will no longer benefit from the award due to the assignment).
- *Beijing CRS Metallurgical Machinery v. Orient Commercial Joint Stock Bank*, 2026 WL 42779 (S.D.N.Y.) (foreign arbitration award enforced on quasi in rem jurisdiction where bank against whom the award was issued maintained bank accounts in the court's district to facilitate exchange of foreign currency even though it did not otherwise do business in the United States).
- *Town of Vinton v. Indian Harbor Insurance Co.*, 161 F.4th 282 (5th Cir. 2025) (motion to compel denied under Louisiana law barring arbitration of insurance claims where foreign insurers were dismissed from the case with prejudice).

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

No Waiver Where Efforts to Arbitrate Were Futile. The Supreme Court in *Morgan v. Sundance* removed prejudice as a component of the waiver of contractual rights. But did *Morgan* modify the notion of futility in the contractual setting? The Third Circuit ruled that it did not. In this case, the court struggled with the issue of what a party must do to preserve its arbitration rights when procedurally those rights had not yet become enforceable – here, until a class was certified. The defendant moved to dismiss, engaged in discovery and mediation, and on this basis, the district court denied its later motion to compel on waiver grounds. The Third Circuit concluded that "When enforceability of a right to arbitration hinges on the occurrence of a foreseeable procedural event – in this case, certification of a class – futility excuses only the failure to seek judicial action which the court could not then grant." In that situation, the party asserting the right to arbitrate "must give clear, reasonably prompt record evidence of its intent to exercise its arbitration right and then promptly move to do so once the event occurs." In this case, unnamed putative class members were not subject to the court's authority until the motion was decided, which would have made any motion to compel before that time futile. The Third Circuit vacated the district court's order denying the motion to compel with the direction that it consider the motion through the prism of futility as laid out in its decision. *Valli v. Avis Budget Group, Inc.*, 162 F.4th 396 (3d Cir. 2025).

Objections to FINRA Arbitration Waived By "Fully Participating" in the Proceeding. Plaintiffs purchased Terry Financial, a financial advisory firm, from Jane Terry ("Seller"), and formed Maestro Global to operate it. Kathleen Kerr, a longtime Terry Financial employee, agreed to work for Maestro Global after the sale. Her employment agreement with Maestro Global contained an arbitration clause governing all claims arising out of her employment. Soon after the closing, a dispute arose regarding the firm's value and alleged efforts by both the Seller and Kerr to divert business from Terry Financial. Maestro Global, along with plaintiffs in their individual capacities, commenced FINRA arbitration proceedings against the Seller and Kerr. Throughout these proceedings, Kerr made numerous objections to arbitrating the claims asserted by Maestro Global on the ground that Maestro Global was not a FINRA member and had no standing to bring claims in a FINRA forum. The FINRA panel found that Kerr and the Seller were jointly and severally liable to the individual plaintiffs and awarded $2.9 million. When the parties cross-moved to confirm/vacate the award, the New Mexico district court confirmed the award against the Seller but vacated the award as to Kerr. The district court determined that the employment contract between Kerr and Maestro Global superseded and displaced the parties' FINRA arbitration obligations and, therefore, the FINRA panel exceeded its authority by requiring Kerr to arbitrate claims in the FINRA forum. On appeal, plaintiffs argued that "Kerr waived any objection to arbitrating ⋯ when she expressly, repeatedly, and consistently agreed to submit to arbitrating with them." The Tenth Circuit agreed. The court noted that "a party may waive its arguments against arbitrating claims by fully participat[ing] in arbitration without any relevant objection." Here, the court observed that Kerr made numerous objections to arbitrating the claims asserted by Maestro Global, but she made no such arguments concerning the individual plaintiffs' claims. Additionally, the court found that Kerr "vigorously participated" in the FINRA proceeding, including, among other things, by asserting cross claims and "seeking over $280,000 in compensatory damages, punitive damages, and attorney fees and costs." Thus, "by failing to object in the hearing and instead 'fully participating in arbitration without any relevant objection,' she waived her arguments that she has attempted to make in district court and on appeal against arbitrating [plaintiffs'] claims in the FINRA forum." Accordingly, the district court judgment vacating the award against Kerr was reversed, and the case was remanded with instructions to grant the plaintiffs' motion to confirm the award. *Waked v. Kerr*, 2025 WL 3653869 (10th Cir.).

Case Shorts

- *Maune v. Raichle*, 721 S.W.3d 865 (Mo. 2025) (motion to compel granted where delegation clause reserves to arbitrator threshold questions such as whether the claims arise under the agreement and therefore would be arbitrable).
- *Osterhaus Pharmacy v. UnitedHealth Group*, 2025 WL 3280347 (W.D. Wash.) (challenge to delegation provision on unconscionability grounds rejected where economic coercion claim goes to the agreement as a whole and was not directed at the delegation term specifically).
- *Sierra Pacific Industries Wage and Hour Cases*, 116 Cal. App.5th 1038 (2025), as modified on denial of reh'g (January 5, 2026), review filed (January 20, 2026) (employer waived arbitration right where it repeatedly resisted requests to produce arbitration agreements, participated in extensive discovery and mediation involving employees who had signed arbitration agreements, and only after a class had been certified did it move to compel arbitration).
- *Aramark Services v. Aetna Life Insurance Co.*, 162 F.4th 532 (5th Cir. 2025) (arbitration provision authorizing arbitrator to award "only monetary relief" did not constitute clear and unmistakable proof that arbitrability questions are for arbitrator to decide).
- *Reserve Industries Corp. v. Roll-Em-Up Franchise Group*, 2025 WL 3296162 (D. N. Mex.) (clear and unmistakable intention to delegate arbitrability issues to arbitrator lacking where parties entered into two agreements, one providing that all disputes are to be arbitrated and the second providing for exclusive jurisdiction to courts in New Mexico).
- *Sound Around, Inc. v. Anhui Light Industries International*, 2025 WL 3484829 (S.D.N.Y.) (arbitration agreement's incorporation of the CIETAC rules sufficient to delegate questions of arbitrability to arbitrator).
- *Moody v. Starbucks Corp.*, 2026 WL 146404 (S.D.N.Y.), reconsideration denied, 2026 WL 381787 (waiver issue based on defense of action in court is for court to decide even in the face of a valid delegation clause).

III. JURISDICTIONAL ISSUES: UNCONSCIONABILITY

Procedural Unconscionability Found Where "High Degree of Surprise". Fuentes was given five minutes to sign an employment packet that included a lengthy arbitration agreement "printed in a very small font and its text is so blurry and broken up that it is nearly unreadable." Fuentes later sued for wrongful discharge and the employer moved to compel arbitration. The trial court denied the motion, finding both procedural unconscionability and that the fine-print terms were indicative of substantive unconscionability. The appeal court reversed. The California Supreme Court, finding fault with the appellate court's reasoning, remanded the case to the trial court for further proceedings. In doing so, the Court clarified that the manner in which the arbitration agreement was printed did not inform the substantive unconscionability analysis, only the finding of procedural unconscionability. "An otherwise fair and mutual term is not made substantively unconscionable by printing it in a manner that makes it difficult to read; the fact that a term is printed in tiny, blurry font does not alone make it harsh, one-sided, or otherwise unreasonably unfair." The Court had no trouble finding procedural unconscionability where, as here, the "agreement involved an unusually high degree of surprise." The Court added that the agreement was complex and full of jargon, including "one sentence by itself is 214 words long." The Court concluded that "taken together, the agreement's difficult-to-read text and prolix language present a substantial barrier to understanding its terms" rendering the agreement procedurally unconscionable. *Fuentes v. Empire Nissan, Inc.*, 2026 WL 265574 (Cal.).

Substantive Unconscionability Prevents Enforcement of Arbitration Agreement. The employee in this case was presented with, and signed on the same day, an arbitration agreement and a confidentiality and non-disclosure agreement (the "CND"). The trial court denied the motion to compel by the employer, IGS, on the grounds of substantive unconscionability due to a lack of mutuality. The appellate court upheld the denial of IGS's motion to compel and rejected its argument that it was an error to read the arbitration agreement and CND together. The court noted that the documents were not only presented to and signed by the employee on the same day, but they also dealt with the same subject matter, namely, the parties' respective rights when bringing claims against each other. Because of this, the court concluded that "failing to read them together artificially segments the parties' contractual relationship" and "fails to account for the overall dispute resolution process the parties agreed upon." As such, the court reasoned that it would also read the documents together to determine the "net effect" of the terms. Turning to the unconscionability analysis, the court explained that "[lack] of mutuality exists when an arbitration agreement directs a wide range of claims that would typically be brought by an *employee* into arbitration, but specifically excludes from arbitration claims that would typically be brought by an *employer*, including claims related to intellectual property rights and those for equitable relief related to unfair competition or the disclosure of trade secrets or confidential information." Finding that was precisely the case here where, under both the arbitration agreement and the CND, "claims that are typically brought by an employee are forced into arbitration while claims that are more likely to be brought by IGS may be brought in court." For these reasons, the court concluded "the trial court correctly found there was a lack of mutuality in the Arbitration Agreement and CND." The court also held that the trial court's refusal to sever the unconscionable provisions "was not an abuse of discretion" because where, as here, an arbitration provision has "more than one unlawful provision, [it] can be considered permeated by unconscionability." *Gurganus v. IGS Solutions LLC*, 115 Cal. App.5th 327 (2025), review denied (December 30, 2025).

Case Shorts

- *Whalen v. NBA Properties*, 2025 WL 3013144 (S.D.N.Y.) (substantive unconscionability claim challenging arbitration agreement rejected where terms of use required both mobile app subscriber and NBA marketing arm to participate in pre-dispute resolution process requiring period of informal negotiation).
- *Stow v. Activehours, Inc.*, 2025 WL 2986864 (M.D. N. Car.) (ability to opt out of arbitration negates unconscionability claim).
- *Wise v. Tesla Motors*, 117 Cal. App.5th 325 (2025), review filed (January 30, 2026) (unconscionable terms, such as waiver of bond for employer seeking injunctive relief and requiring employee to prove by clear and convincing evidence that alleged confidential information was in the public domain, are ancillary to the obligation to arbitrate and can be severed).
- *Mulroy v. Blume Forte Fried Zerres & Molinari*, 2025 WL 3706895 (N.J. Super.) (unconscionability claim rejected where no provision of the arbitration agreement shocked the conscience, waiver of judicial forum is legitimate, and plaintiff was under no compulsion to accept employment if terms were unacceptable to her).

IV. CHALLENGES RELATING TO AGREEMENT TO ARBITRATE

Non-Signatory Compelled to Arbitrate under Apparent Agency Theory. Sucafina entered into four contracts (the "NPCO Contracts") with Agrosura, a subsidiary of Green Coffee Company Holdings ("GCC"), for the sale and purchase of green unroasted coffee. These contracts provided for binding arbitration in New York City for all disputes pursuant to the Green Coffee Association Rules. Over time, the parties' contractual relationship deteriorated, and eventually GCC sent Sucafina a letter stating that GCC "hereby (and on behalf of its subsidiary, [Agrosura]) wishes to terminate all business relations with Sucafina globally." Thereafter, Sucafina initiated arbitration against Agrosura and GCC. Agrosura appeared at the arbitration, but GCC refused to arbitrate as it was not a signatory to the arbitration agreement. Nevertheless, Sucafina asserted that GCC should be bound to arbitrate under an agency theory and moved to compel arbitration. The court's analysis began by noting that "the Second Circuit recognizes "[t]raditional principles of agency law may bind a nonsignatory to an arbitration agreement . . .. Agency can result from 'actual' or 'true' authority . . . or 'apparent' authority, which results 'when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal's manifestations.'" The court explained that while apparent authority is usually a question of fact, "a principal may be estopped from denying apparent authority if (1) the principal's intentional or negligent acts, including acts of omission, created an appearance of authority in the agent, (2) on which a third party reasonably and in good faith relied, and (3) such reliance resulted in a detrimental change in position on the part of the third party." Here, the court determined, "GCC's creation of apparent authority stems from [a GCC employee's] representations to Sucafina, including presenting GCC financials, referring to Agrosura and GCC interchangeably, and negotiating the contract with a GCC title without any qualifier as to his authority." These acts by GCC created "a reasonable belief" in Sucafina that Agrosura acted as an agent for GCC. Further, the court found that Sucafina relied to its detriment on the representations that Agrosura was acting as GCC's agent. Thus, "agency is established here not because of GCC and Agrosura's parent-subsidiary relationship, but instead because of GCC's involvement in the contracts at issue." Concluding that GCC is bound by the arbitration clause in NPCO's Contracts, the court granted Sucafina's motion to compel. *Sucafina NA Inc. v. Green Coffee Company Holdings*, LLC, 2025 WL 3640410 (S.D.N.Y.).

FAA Applies Where Parties Expressly Agree. Tuufuli signed her arbitration agreement electronically at the time of her hiring by the defendant, a dental services facilitator. The arbitration agreement provided that the FAA governed. The employer's operations were exclusively in California, and Tuufuli alleged that she rarely interacted with entities outside of California. On this basis, she argued that the arbitration agreement did not involve interstate commerce and therefore the FAA did not apply. The trial court rejected Tuufuli's argument, and the California appellate court affirmed. The court began its analysis by noting that the party asserting FAA coverage bears the burden of demonstrating it. The court, however, observed that the presence of interstate commerce is not the only way for the FAA to govern an arbitration agreement. In this case, the court reasoned that based on the terms of the arbitration agreement, the parties agreed that the FAA would govern "any dispute arising out of Tuufuli's employment" with defendant. The court emphasized that "arbitration under the FAA is a matter of consent." In this case, the parties agreed that the FAA governs. Therefore, the court reasoned that it "need not determine whether the FAA also applies because the agreement involves interstate commerce."*Tuufuli v. West Coast Dental Administrative Services*, 117 Cal. App.5th 10148 (2026).

Website Operator Fails to Establish Browsewrap or Clickwrap Agreement. The Eleventh Circuit affirmed a district court's refusal to compel arbitration. The consumer accessed Nexgen's website to purchase two products and, in doing so, clicked a promotional banner located above a "Terms of Use" hyperlink. He then clicked through pages of the Nexgen website before arriving at the checkout page, where he was met with a "Go To Step #2" button. In small-print language directly below the button, the website provided: "By clicking Go To Step #2 above, I consent to receive from Nexgen emails, calls, and SMS text messages at any time, which could result in wireless charges, at the number provided above." Plaintiff clicked "Go To Step #2" and finalized his purchase. Nexgen argued that the Messaging Program plaintiff consented to join by selecting "Go To Step #2" was governed by the website's Terms of Use, which included an arbitration provision. Nexgen moved to compel arbitration, asserting that enforceable clickwrap and/or browsewrap agreements were formed when plaintiff visited its website to purchase products. The Eleventh Circuit disagreed. The court first held that Nexgen failed to establish that a browsewrap agreement had been formed because Nexgen's "Terms of Use" were not conspicuous and would not put a reasonable person on inquiry notice of them. "The placement of the 'Terms of Use' hyperlink was far from obvious or noticeable. The hyperlink was at the bottom of the webpage, which was crowded with other information. In addition, the hyperlink was not in a contrasting color . . . it was in white coloring and a small font and did not have the hallmarks of a hyperlink—*i.e.,* if a consumer did not happen to hover their cursor over it, they might not know it is a link because the text was not blue or underlined or highlighted in a way [one might] expect from hyperlinked text." The court likewise held that Nexgen failed to establish that a clickwrap agreement had been formed. "Nothing on the website informed users that clicking on any button manifested their assent to the Terms of Use." As such, "[a] consumer in [plaintiff's] position would not have known to review the 'Terms of Use'; he was never directed to them and was never asked to represent that he had read them." *Valiente v. Nexgen Global, LLC*, 2025 WL 3140480 (11^{th} Cir.). See also *Ferrell v. Snapcommerce Holdings*, 2025 WL 3280992 (N.D. Cal.) (online consumer not put on inquiry notice where the link to the terms of service "appears in very small, gray font on a white background at the bottom of a page on which it requires users to enter a phone number"); *Sanchez v. Maggy London International*, 2025 WL 3097931 (S.D. Cal.) (assent to website's terms and conditions, including arbitration provision, ruled as lacking where "pay now" button was not accompanied by a prompt or notice that purchase bound user to the terms of service). But see *Stow v. Activehours, Inc.*, 2025 WL 2986864 (M.D. N. Car.) (plaintiff online users of payday services must arbitrate consumer protection violation claims where sign-up screen indicated immediately below the "create account" button that plaintiffs were agreeing to terms of service); *Dahdah v. Rocket Mortgage*, 2026 WL 194455 (6^{th} Cir.) (website provided sufficient notice where terms of service, which included an arbitration agreement, were hyperlinked in bright blue font that contrasted with a white background).

Case Shorts

- *Lanesborough 2000, v. Nextres, LLC*, 2026 WL 318235 (2d Cir.) (language in arbitration agreement stating that each party shall bear its own attorneys' fees did not preclude award of fees by arbitrator to sanction a party's bad faith participation in the arbitration).
- *Brooks v. WarnerMedia Direct, LLC*, 2025 WL 3073839 (S.D.N.Y.) (unauthorized user of streaming service ruled as having assented to terms of service, including arbitration, as the court's inquiry focuses on actual use and not the owner of the account).
- *Brooks v. WarnerMedia Direct, LLC*, 2025 WL 3073839 (S.D.N.Y.) (subscriber to streaming service assented to updated terms of service and arbitration by paying for and maintaining subscription for six months after receiving notice of updated terms).
- *U.S. Acute Care Solutions v. Doctors Co.*, 272 N.E.3d 1191 (Ohio 2025) (bad faith insurance claim, sounding in tort, is subject to insurer's broad arbitration clause).
- *Mulroy v. Blume Forte Fried Zerres & Molinari*, 2025 WL 3706895 (N.J. Super.) (arbitration offer ruled as having been accepted despite plaintiff's failure to recall signing the agreement, where the authenticity of her signature was not in dispute).
- *Diaz v. Wanrong Trading Corp.*, 2025 WL 3119189 (E.D.N.Y.) (forgery claim rejected where plaintiff failed to rebut evidence of authenticity of signatures presented supported by expert opinion).
- *Alvarez v. TTEC Services Corp.*, 2026 WL 352884 (D. Colo.) (employee's e-signature on arbitration agreement when she was onboarded sufficient to constitute assent to arbitrate claims).
- *Mertens v. Benelux Corp.*, 162 F.4th 492 (5th Cir. 2025) (employer's failure to sign arbitration agreement negates its enforceability where agreement provided that parties were bound "by signing this arbitration agreement").
- *Williams v. Moon Active, Ltd.*, 2025 WL 3551439 (N.D. Cal.) (minor consented to arbitration by clicking a box confirming she was 18 years of age or older, and the pop-up was plain and obvious).
- *Patrick v. Ramsey*, 2025 WL 3157725 (9th Cir.) (non-signatory cannot invoke arbitration clause in agreement between entity he promoted and consumer where the consumer's class action against the non-signatory alleging fraud predated signing of agreement).
- *Lyles v. Santander Consumer USA*, 347 A.3d 449 (Md. 2025) (lender who financed sale of truck may not invoke arbitration provision in purchase order between buyer and dealership as assignment terms in related retail installment sale contract did not encompass purchase order terms).
- *Mobile Nursing and Rehabilitation Center v. Sliman*, 2025 WL 2943226 (Ala.) (nursing home residence's wrongful death claim subject to arbitration where widow failed to

demonstrate that husband was incapacitated when he signed the arbitration agreement and where periods of lucidity were possible).

- *Ellis v. Wallet Buddha, LLC*, 2025 WL 4061562 (C.D. Cal.) (CEO's declaration, which failed to show he had personal knowledge of the content of the website at the time plaintiff visited the website or responsibility for developing or updating it, was ruled insufficient to support defendant's claim that an agreement with plaintiff had been formed and therefore defendant's motion to compel was denied).
- *Alvarez v. TTEC Services Corp.*, 2026 WL 352884 (D. Colo.) (testimony that hiring process would not have proceeded in the absence of the new hire's execution of the arbitration agreement sufficient to demonstrate agreement to the arbitration contract).
- *Romero v. Goldman Sachs Bank, USA*, 2026 WL 205599 (S.D.N.Y.) (motion to compel denied where plaintiff consistently denied receiving offer and agreeing to arbitrate and defendant's account of "sign-up process changed throughout the course of the litigation of their motion to compel").

V. CHALLENGES TO ARBITRATOR, FORUM, OR FORUM'S RULES

Title IX Preempts Union Grievance Procedures. Rutgers University receives federal funding and is therefore subject to Title IX regulations. Rutgers established a Title IX-compliant complaint procedure. A Title IX complaint was filed and a union employee was terminated following the hearing on the Title IX complaint. The union filed a grievance under its collective bargaining agreement, and an arbitration was held before New Jersey's Public Employment Relations Commission (PERC). Rutgers' application to PERC to refrain from arbitrating the claim on federal preemption grounds was denied, as was its appeal to the New Jersey Appellate Division. The New Jersey Supreme Court reversed. The Court focused on the applicable Title IX regulations, which required that any grievance procedure utilized by an employer "afford equal rights and protections to both alleged victims and alleged harassers." The grievance process under the collective bargaining agreement, according to the Court, did not meet this standard. "Specifically, the arbitration would only involve Rutgers, [the alleged harasser, and the union]. [The victim] would not be a party to the arbitration." Because this process did not treat the parties to the Title IX dispute equally, the Court held that it violated the Title IX regulations. The Court rejected the argument that Title IX's complainant could participate in the arbitration as a witness and that Rutgers and her interests were aligned. The Court explained that since the complainant "is not a party to the arbitration, she is denied her right to present her arguments and allegations to the arbitrator, who will issue a binding determination. She also would not be able to contest the discipline imposed." While ruling that the applicable collective bargaining agreement violated Title IX in this instance, the Court was careful to add that Title IX does "not preempt every union grievance process; our holding is limited to this particular" collective bargaining agreement which can be brought into compliance, the court added, through further negotiations. *In the Matter of Rutgers v. AFSCME Local 888*, 2026 WL 233107 (N.J.).

Case Shorts

- *R.W. Chelsea Energie v. Vision Indian Ocean*, 2025 WL 3456670 (S.D.N.Y.) (vacatur rejected based on arbitrator's dismissal of counterclaims, even though filing fee for counterclaims were not paid in violation of applicable AAA rule requiring payment of filing fee, which court deemed to be permissive and not mandatory).
- *Baker Hughes Saudi Arabia Company v. Dynamic Industries*, 2026 WL 251711 (E.D. La.) (Dubai International Arbitration Center found to be an appropriate venue for arbitration where the parties' designated forum was dissolved and where the rules of the two arbitration providers are substantially similar).
- *Dahdah v. Rocket Mortgage*, 2026 WL 194455 (6th Cir.) (court under the FAA should designate and appoint arbitrator where parties' enforceable arbitration agreement does not provide details of arbitration).

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

Employer's Misleading Statements Bars Arbitration of Class Claims. Two years after plaintiff employees filed a class action, the employer adopted a mandatory arbitration policy. Under that policy, class members were required to choose between resigning from their jobs or opting out of the class action. In enacting the policy, the employer disparaged class actions, calling them wasteful and inefficient and as failing to prioritize the concerns of employees. The district court ruled that the employer's policy threatened the fairness of the class action and denied defendant's motion to compel. The Ninth Circuit affirmed. The court explained that, under the federal class action rules, it has the duty and authority to control the litigation and the conduct of the parties and counsel. The court emphasized the harmful impact the employer's misleading statements had on potential class members and their participation in the class action. The employer's attempt "to couch this repeated language as its own opinion does not cure its obvious impact." For these reasons, the court affirmed the district court ruling prohibiting the enforcement of the arbitration agreement on class members. *Avery v. Teksystems, Inc.*, 2026 WL 218992 (9th Cir.).

Clause Construction Award Authorizing Class Arbitration Upheld. The arbitration provision in this case did not mention class arbitration. Nonetheless, the arbitration panel, to whom the question was delegated, concluded that the parties had unambiguously agreed to class arbitration. The panel broadly interpreted the relevant arbitration provision, which provided that "any controversy, claim or cause of action . . . arising out of or relating to" the shares at issue would be subject to arbitration. The district court rejected a motion to vacate the clause construction award, noting that its role was to determine whether the panel had the authority to rule on the question, not whether the result was correct. "Defendants failed to clear the high hurdle to show that the Tribunal was acting outside its delegated authority. Rather, the Tribunal's determination that the Arbitration Agreement permits class arbitration 'fell within its interpretive authority.'" The court noted that the panel carefully analyzed applicable Supreme Court case law in this area. In the court's view, "It can hardly be said that the Tribunal refused to apply or ignored well-defined, explicit, and clearly applicable legal principles . . .. Rather, the Tribunal grappled with the relevant case law and situated its interpretation of the Arbitration Agreement within that case law." For these reasons, the court upheld the panel's clause construction award. *Fasano v. Li*, 2025 WL 3002971 (S.D.N.Y.).

Case Shorts

- *Khan v. Coinbase*, 115 Cal. App.5th 518 (2025) (consumers' unfair competition claims are not precluded by bar on public injunctive relief in online user terms and conditions).
- *LaCour v. Marshalls of CA, LLC*, 117 Cal. App.5th 505 (2025) (arbitration provision, which required that claims be brought in court if PAGA waiver was invalidated, did not allow for individual PAGA claim to be heard by arbitrator).
- *Barnes v. G4S Secure Solutions (USA)*, 2026 WL 296990 (6th Cir.) (arbitration agreement excluding arbitration of claims "involving" an employee covered by a collective bargaining agreement did not permit arbitration of a class action where at least one plaintiff was subject to a collective bargaining agreement).

VII. HEARING-RELATED ISSUES

Panel's Evidentiary Rulings Not Ground for Vacatur. An arbitration panel ruled in favor of the insured, and the insurer moved to vacate the award. The insurer argued, among other things, that the panel improperly refused to consider crucial evidence supporting its claims. In particular, the insurer argued that the panel should have admitted evidence related to the insured's communications and settlement terms with other insurance companies involved in the dispute. The court rejected this claim, noting that "the panel had broad discretion to decide questions of evidentiary admissibility, privileges, and weight." The panel ruled that the evidence in question reflected privileged settlement discussions that were not waived. The court held that this determination by the panel was "well within its broad discretion." The court added that even if evidence had been admitted showing that the insured settled for less than 100 percent of its claims with other insurers, it merely reflects "pragmatic attempts 'to get a deal done.'" Finally, the court emphasized that to vacate an arbitration award for failing to consider evidence, a lack of fundamental fairness must be shown. The court concluded that "the panel's decision here not to consider [the insured's] settlement communications with other insurers as evidence of the proper loss allocation was, for multiple reasons, not fundamentally unfair." For these reasons, the court denied the insurer's motion to vacate the panel's award in favor of the insured. *Flextronics International v. Allianz Global Corporate and Specialty SE*, 2025 WL 3168187 (S.D.N.Y.), judgment entered, 2025 WL 3688681 (S.D.N.Y.).

Arbitrator Entitled to Draw Adverse Inference. Miller, a union employee, was terminated for dishonesty arising from the alleged falsification of training documents. The union grieved the termination, and the arbitrator reinstated Miller with full back pay. In doing so, the arbitrator drew an adverse inference against the employer for failing to call Miller's two supervisors as witnesses. The employer moved to vacate, arguing, among other things, that the arbitrator exceeded his authority by drawing adverse inferences based on the supervisors' failure to testify. The district court denied the motion, and the Eighth Circuit affirmed. The court emphasized that the employer had the burden of proving just cause to terminate Miller and that the arbitrator had the discretion to apply the facts presented, or not presented, to determine whether that burden was met. The court noted that the "supervisors were available and possessed pertinent information." For these reasons, the Eighth Circuit concluded that the arbitrator acted within his authority in drawing adverse inferences and that this did not constitute manifest disregard of the law. *Meridian Medical Technologies v. International Brotherhood of Teamsters*, 158 F.4th 924 (8th Cir. 2025).

Case Shorts

- *Univabs Solutions v. The Radiology Group*, 2025 WL 4070063 (N.D. Ga.) (claims that arbitrator failed to ensure that prevailing party complied with its discovery obligations rejected where no specific prejudice shown and, in any event, "there is no right in arbitration to the same discovery procedures enjoyed in federal courts").
- *McMasters v. Restaurant Brands International*, 2025 WL 3206675 (3d Cir.) (arbitrator correctly applied burdens of proof for federal pregnancy discrimination cases, thereby negating plaintiff's manifest disregard claim).

VIII. CHALLENGES TO AND CONFIRMATION OF AWARDS

Fourth Circuit Adopts Collateral Attack Rule. The Federal Arbitration Act provides the basis for challenging an arbitration award. What if a party seeks to challenge an award on non-statutory due process grounds? The Fifth, Sixth, and Tenth Circuits have adopted the collateral attack rule, which prohibits challenges to awards outside the bounds of the FAA. The Fourth Circuit added its name to that ledger, finding that "the impermissible-collateral-attack rule is necessary to fully effectuate the exclusivity of the Federal Arbitration Act, so we adopt it here." In this case, the losing party in an arbitration sought to both vacate the award under the FAA and challenge it on due process grounds by means of a complaint. The court explained that, to determine whether a complaint is subject to the collateral attack rule, a court must examine the relationships among the alleged wrongdoing, the purported harm, and the arbitration award. In this case, the court found that the complaint addressed the same issues as were subject to the FAA. For example, the complaint alleged that the arbitrator refused to consider evidence and awarded inappropriate damages and remedies. Where a complaint raises an impermissible attack on an arbitration award, the court concluded that the complaint must be dismissed in toto without addressing its merits. *Center for Excellence in Higher Education v. Accreditation Alliance of Career Schools and Colleges*, 2026 WL 303593 (4th Cir.).

Grounds for Vacatur Based on Factual Error Explored. The Ninth Circuit reiterated its deferential approach towards vacatur of arbitration awards. This is particularly so where the motion to vacate is based on factual errors made by the arbitrator. In order to vacate, the arbitrator's error must be on "legally dispositive facts" and must be "so 'egregious' and central to the legal issue that it amounts to manifestly disregarding the law." Here, the arbitrator awarded attorneys' fees on counterclaims despite the parties having settled the counterclaims and agreed that each party would bear its own attorneys' fees. The court concluded that vacatur was not warranted. The court noted that the parties failed to remind the arbitrator of its earlier stipulation when submitting their attorney fee applications. The court characterized the counterclaims as ancillary to the underlying wage and hour claims and the arbitrator's oversight as not egregious enough to warrant vacatur. For it to have been egregious, "the arbitrator [must have] intentionally ignored a critical, undisputed fact that would have determined a legal issue in the arbitration." In this case, the court concluded that "though the arbitrator may have erred, such errors are risks inherent in arbitration proceedings." *VIP Mortgage, Inc. v. Gates*, 162 F.4th 1010 (9th Cir. 2025).

"Severe Appearance of Partiality" Not Sufficient for Vacatur. The Umpire on a three-person panel in an ad hoc arbitration was offered a paid position as an appraiser by respondent's counsel during the proceedings. Claimant's counsel was not initially informed of this ex parte contact. The Umpire did disclose respondent's counsel's offer, but in doing so mistakenly failed to mention that he himself had ex parte communications with respondent's counsel. Claimant moved to recuse the arbitrator. The arbitrator offered, as had been suggested by respondent's counsel, a quid pro quo, namely, that he would decline the appraisal job if claimant withdrew its recusal motion. Claimant's counsel did not agree, and the arbitrator denied the motion while deciding to reject the appraisal job. Claimant argued that this did not cure the appearance of impropriety; indeed, it made it worse by creating an impossible dilemma for claimant. The arbitration proceeded, but the arbitrator allegedly reacted with "evident pique" when he learned that claimant was bringing an action in court seeking his removal. An award was issued in respondent's favor and claimant moved to vacate the award. The court found that "the direct solicitation of the Umpire for a paid position by [respondent's] counsel during the pendency of the arbitration, and the Umpire's initial misleading disclosures and subsequent attempts to condition his declination on the [claimant] withdrawing the recusal motion, clearly compromised the integrity of the process and mandates strict scrutiny." The court concluded that the "conduct of both the Umpire and the counsel for [respondent] was improper and created a severe appearance of partiality." Nonetheless, the court ruled that claimant failed to establish by clear and convincing evidence that the "improprieties or subsequent procedural rulings, prejudiced its rights in the arbitration." The court explained that under New York law "vacatur is warranted only upon a showing of actual prejudice or harm resulting from the alleged misconduct." As claimant was unable to demonstrate actual harm, the court denied the motion to vacate and confirmed the award. *57th & 6th Ground, LLC, v. Carnegie House Tenants Corp.*, 2026 WL 90343 (N.Y. Sup. Ct. N.Y. Cty.).

<u>Case Shorts</u>

- *C. Czarnikow Sugar v. Pullman Sugar*, 2025 WL 3165224 (S.D. Fla.) (partial final award ruled to be final and subject to confirmation where award fully disposed of certain claims [but not counterclaims] and designated the prevailing party).
- *Meridian Medical Technologies v. International Brotherhood of Teamsters*, 158 F.4th 924 (8th Cir. 2025) (challenge to award on public policy grounds is rejected in absence of finding that the award, rather than the employee's alleged dishonesty, violated public policy).
- *Restrepo v. Mechanical Electrical Corp.*, 2025 WL 2882042 (E.D.N.Y.) (award following arbitration by written submission confirmed where arbitrator reviewed and applied stipulation of facts and evidence on the record and no evidence that arbitrator acted arbitrarily or contrary to law was presented).
- *R. W. Chelsea Energie v. Vision Indian Ocean*, 2025 WL 3456670 (S.D.N.Y.) (court applied same 10% pre-judgment interest rate that arbitrator determined for period up to confirmation of award).
- *Holtec International Corp. v. Michigan State Utility Workers Council*, 160 F.4th 723 (6th Cir. 2025) (award which mistakenly named parent company of actual respondent, rather than party to whom award applied, ruled not subject to vacatur on that basis where there was no ambiguity in the award as to the real party in interest).
- *BurgherGray, LLP v. Klug*, 2025 WL 3563176, (S.D.N.Y.) (claim that arbitration award was procured by fraud rejected where alleged fraudulent activity by opposing party "could have [been] discovered . . . well before the arbitration began").
- *O'Sullivan and Associates v. Peconic Sunset, LLC*, 2025 WL 3780416 (N.Y. Sup. Ct.) (claim that arbitrator violated public policy rejected where claim that prevailing architect was not licensed and therefore not entitled to recovery was a fact-intensive question proper for the arbitrator to decide).

- *C. Czarnikow Sugar v. Pullman Sugar*, 2025 WL 3165224 (S.D. Fla.) (lack of competent English-speaking counsel did not constitute ground for vacatur of award under the FAA).
- *Oenga v. Givens*, 2026 WL 182337 (Alaska) (decision by Alaska Bar Association's arbitration panel to limit the scope of issues to be addressed upheld as constituting a "reasonably possible interpretation" of its authority under the applicable agreement).
- *Transperfect Translations International v. Milosavljevic*, 2026 WL 237521 (S.D.N.Y.) (award under New York Convention affirmed where "arbitration panel resolved evidentiary objections, provided Respondents' counsel multiple extensions when counsel experienced medical issues, and ultimately issued a well-reasoned opinion which addressed each of Respondents' legal arguments").

IX. ADR – GENERAL

Oral Agreement to Settlement Terms in Mediation Enforced. A former employee, represented by counsel, participated by Zoom in a mediation before a federal magistrate judge. The parties reached a settlement agreement and the magistrate judge recited the essential terms of the agreement, which was recorded, including: payment by the employer to the employeeof within approximately 30 days after execution of the settlement paperwork; that the settlement agreement would include non-defamation, non-rehire, and confidentiality provisions; that the case would be dismissed with prejudice with each party to bear its own fees and costs; and that there would be a full release of all claims. Counsel for both parties orally agreed on the record with the magistrate judge's recitation." A settlement agreement was drafted reflecting these terms, but plaintiff refused to sign it, claiming she had been pressured to agree to its terms and had been subjected to undue influence. The employer filed a motion to enforce the agreement, which was granted. In doing so, the trial court rejected the plaintiff's request for an evidentiary hearing. On appeal, the First Circuit affirmed. The court made clear that oral settlement agreements are enforceable as long as the parties agree to their material terms. The court noted that "The parties actively engaged in negotiations before the magistrate judge and ultimately agreed to the material terms recited on the record. When the magistrate judge carefully recited and memorialized those terms, [plaintiff] did not object or condition her assent, nor did her counsel." The court rejected "as insufficient to undermine the parties' objective manifestation of assent" plaintiff's after-the-fact claim that there were ambiguities in the agreement and concerns about its tax consequences. As plaintiff did not execute the settlement agreement despite being given the opportunity by the district court after its finding, the First Circuit upheld the district court's dismissal of plaintiff's complaint for failing to comply with the court order. *Maccarone v. Siemens Industry*, 2026 WL 237669 (1st Cir.).

Court Sanctions for Failing to Participate in Mediation in Good Faith Reversed. Two children were removed from their parents following a non-accidental injury to one of the children. While the Texas Department of Family and Protective Services considered placing the children with their grandmother, the court ordered mediation under Texas's ADR Act involving the parents and a Department representative. The mediation failed. The parents moved for sanctions, alleging that the Department made groundless and bad-faith statements during mediation and had no interest in proposing a resolution to the dispute other than termination of their parental rights. The parents characterized the Department representative as being unprepared, rigid in his positions, and resistant to the spirit of the ADR Act. The trial court ruled in favor of the parents, concluding that the Department did not participate in the mediation in good faith. Employing its inherent authority to sanction parties, the court ordered the Department to pay the fees for a court-appointed counsel for the father, the mother's attorneys' fees, and the mediation fee. The appellate court reversed. The court acknowledged that under Texas law, parties can be sanctioned for failing to attend court-annexed mediation. The court held, however, that "a trial court cannot compel parties to negotiate in good faith at the mediation." The court emphasized that the mediation is confidential and "may not be used as evidence against the participant in any judicial proceeding." This includes "the manner in which the participants negotiate in mediation." The appellate court criticized the trial court for questioning "the quality of the Department's substantive negotiation efforts at mediation by scrutinizing the number of offers advanced by the Department and how long it tried to negotiate." The court concluded that while the ADR Act encouraged parties to participate in alternative dispute resolution procedures, "it does not invite post-procedure policing of parties' negotiation efforts or evaluation of the caliber of their participation and engagement in the process. Such a notion does not comport with the voluntary nature of ADR procedures or the ADR Act's confidentiality protections." For these reasons, the appellate court reversed the trial court's order of sanctions. *In the Interest of I.T. and E.T., Children*, Tex. App. Case No. 10-25-00123-CV (Tex. App. October 2, 2025).

Mediation Term Sheet Enforced. A lawyer, Schlecht, proceeding *pro se*, settled his litigation against Northwestern Mutual Life Insurance in mediation. The parties executed a "Settlement Term Sheet Memorandum" which provided that the case would be terminated "in accordance with standard contractual language" to be drafted by Northwestern's counsel. An experienced mediator represented to the court that the matter had been settled. The draft settlement agreement included a "non-reliance" term which represented that the parties had "conducted an independent investigation of the facts and do not rely upon any statement or representation of the other party . . . other than as expressly provided for in the Agreement." Schlecht refused to execute the settlement agreement, arguing that the non-reliance provision was a material term not agreed to by the parties. He moved to vacate the Term Sheet. The district court scheduled and held a hearing, but

Schlecht failed to appear. The district court denied his application, and the Eighth Circuit affirmed. The core issue, according to the Eighth Circuit, was whether the non-reliance provision was a material term of the settlement, or merely a standard provision of settlement agreements. In the court's view, the non-reliance provision "restated concepts that were already in essence part of the settlement memorandum," such as the right to obtain advice from counsel. The court emphasized that the "phrasing of the non-reliance clause did not add or alter any settlement term or provision in the settlement memorandum, let alone a material term." The Eighth Circuit noted that the term sheet "made plain that the final settlement documents would contain phrasing consistent with 'standard contractual language'" and that Schlecht, an experienced attorney, did not question the representations made by Northwestern. The Eighth Circuit concluded that Schlecht "unambiguously agreed to settle the case" and affirmed the district court's dismissal of his challenge to the enforceability of the mediation term sheet. *Schlecht v. Goldman*, 157 F.4th 963 (8th Cir. 2025).

Case Shorts

- *Lanesborough 2000 v. Nextres, LLC*, 2026 WL 318235 (2d Cir.) (arbitrator's award of sanctions based on party's conduct in arbitration, including "refusing to answer interrogatory, providing irrelevant documents to substantiate false claims, and objecting in bad faith to documents [that this party] offered into evidence" upheld).
- *Reach Air Medical Services v. Kaiser Foundation Health Plan*, 160 F.4th 1110 (11th Cir. 2025) (arbitration award selecting defendant's lower amount rather than plaintiff's proposal more than twice as high in baseball-style arbitration under the Independent Dispute Resolution process "worked exactly as intended: incentivizing both parties to eschew extreme offers that the arbitrator would be more likely to reject").
- *Bader Ahmed Kaiksow Group v. Benedetti*, 2026 WL 262582 (N.D. Ohio) (defendant's motion to compel denied where prior arbitration was dismissed due to defendant's failure to pay required arbitration fees on ground that defendant acted "completely inconsistently" with intent to arbitrate).

X. COLLECTIVE BARGAINING SETTING

Labor Arbitration Award Draws Essence from CBA. Miller, a union employee, was terminated for dishonesty arising from the alleged falsification of training documents. The collective bargaining agreement did not define the term "dishonesty". The union arbitrated the termination, and the arbitrator reinstated the employee with full back pay, finding that the employer failed to demonstrate that Miller's actions were intentionally fraudulent. The employer moved to vacate the award. The district court denied the motion, and the Eighth Circuit affirmed. The court noted that the term "dishonesty" was ambiguous, thus "authorizing the arbitrator to interpret its meaning." The court also rejected the claim that the arbitrator went beyond the collective bargaining agreement by examining the parties' intent. The court rejected this claim, noting that the collective bargaining agreement's silence on the definition of dishonesty permitted the arbitrator to consider other sources. For these reasons, the court concluded the arbitrator's ruling drew its essence from the collective bargaining agreement. *Meridian Medical Technologies v. International Brotherhood of Teamsters*, 158 F.4th 924 (8th Cir. 2025).

<u>Case Shorts</u>

- *APM Terminals Mobile v. International Longshoremen Association*, 159 F.4th 869 (11th Cir. 2025) (collective bargaining agreements are exempt as contracts of employment under the FAA's transportation exemption).
- *1199 SEIU v. Kendall Healthcare Group*, 2026 WL 369941 (11th Cir.) (court challenge to timeliness of filing of grievance rejected as timeliness issue as a matter of procedural arbitrability for arbitrator to decide).
- *APM Terminals Mobile v. International Longshoremen Association*, 159 F.4th 869 (11th Cir. 2025) (denial of motion to compel did not constitute final ruling for purposes of appellate jurisdiction under the Labor Management Relations Act).

XI. <u>NEWS AND DEVELOPMENTS</u>

<u>Supreme Court to Rule on Arbitration Topics in 2026</u>. The Supreme Court accepted certiorari for the following two cases, raising significant issues under the FAA:

- *Flowers Foods, Inc. v. Brock*, 146 S. Ct. 327 (2025). In this case, the Court has agreed to decide whether a local last-mile delivery driver who does not cross state lines is covered under the FAA transportation exemption. The driver here delivered baked goods to retail outlets. The driver ordered the goods from out-of-state bakeries, picked them up at a local warehouse, and delivered them to the retail outlet. The Tenth Circuit concluded that the driver formed the last leg of the product's continuous interstate route, creating an unbroken stream of interstate commerce. Under these circumstances, the Tenth Circuit concluded that the FAA transportation exemption applied.
- *Jules v. Andre Balazs Properties*, 2025 WL 3493153 (U.S.). In this case, the Supreme Court will decide whether a federal court retains jurisdiction, after compelling arbitration and granting a stay, for a later application to that same court to confirm or vacate the award. The Second Circuit ruled that the court retained jurisdiction during the stay and therefore could rule on the post-award motion. The ruling is important because under the recent Supreme Court decision in *Badgerow v. Walters*, federal courts do not have authority to confirm or vacate an arbitration award in the absence of independent jurisdiction such as the presence of a federal question.

<u>Supreme Court Denies *Certiorari* in Various Arbitration Cases</u>. The Supreme Court denied *certiorari* in the following cases, which left unresolved several open issues in the arbitration setting:

- *Zeidman v. Lindell Management, LLC*, 2026 WL 79757 (U.S.) (whether manifest disregard still exists as basis for challenging arbitration award).
- *SunTrust Bank v. Bickerstaff*, 580 U.S. 1020 (2025) (may a class representative opt out of class on behalf of class members who are subject to arbitration agreements).
- *Feldman v. Sullivan*, 2026 WL 79907 (U.S.) (whether general incorporation of standardized arbitration rules constitutes clear intent to delegate availability of class arbitration to arbitrator).

<u>Accelerated Processing of FINRA Arbitration Claims</u>. FINRA amended its Code of Arbitration Procedure to accelerate proceedings for parties based on their age or health condition. Under this new framework, parties may request accelerated processing of their claims if they are 70 years of age or older or if they can certify that they have a medical condition necessitating the speed to prevent prejudice. The goal under these amendments is to render awards within ten months under these circumstances.

<u>California Bill Would Limit AI Use in Arbitration</u>. A bill is pending in the California Legislature that would ban arbitrators from relying on AI to aid them in their decision-making process. It would also ban lawyers from entering private client information into public AI systems. Under this legislation, if an arbitrator does use AI, he or she must notify the parties ahead of time and in any event the arbitrators would still be responsible for all aspects of the award.

XII. TABLE OF CASES

Cases