

January 22, 2025

ADR Case Update 2025 - 2

Federal Courts

- **ARBITRATOR MUST DECIDE THRESHOLD SCOPE ISSUE**

[*Modern Perfection, LLC v Bank of America, N.A.*](#)

United States Court of Appeals, Fourth Circuit

2025 WL 77181

January 13, 2025

A group of small businesses (Plaintiffs) sued BofA for fraud and breach of contract in administering their PPP loans. The PPP Notes included no arbitration provisions, but required each Plaintiff to maintain a deposit account with the bank. BofA moved to compel arbitration under Plaintiffs' Deposit Agreements. Plaintiffs opposed, arguing that their disputes arose under the Notes, not the Agreements, and were therefore not subject to arbitration. The court granted the motion to compel, holding that, under the Agreements' delegation clause, the question of arbitrability must be decided by the arbitrator. Plaintiffs appealed.

The United States Court of Appeals, Fourth Circuit affirmed. The Deposit Agreements contained an enforceable agreement to arbitrate. Whether that agreement covered Plaintiffs' PPP disputes was a threshold issue of scope which, under the delegation clause, was for the arbitrator to decide.

- **COURT, NOT ARBITRATOR, MUST RESOLVE GOVERNMENT IMMUNITY DEFENSE**

[*Ashley v Clay County*](#)

United States Court of Appeals, Fifth Circuit

2025 WL 64013

January 10, 2025

Karen Ashley was terminated from her position as Chief Nursing Officer at Clay County Memorial Hospital (CCMH), a county-owned hospital, after publicly raising patient safety concerns. Ashley filed a retaliatory termination action against Clay County and CCMH. CCMH moved to compel arbitration under her employment contract, and the County moved to dismiss on governmental

immunity grounds. The court granted CCMH's motion to compel and sua sponte compelled the County to join the arbitration, leaving the immunity issue for the arbitrator to decide. The County appealed.

The United States Court of Appeals, Fifth Circuit reversed. The court below erred in compelling arbitration against the County without first resolving its governmental immunity defense. Governmental immunity could potentially shield the County from suit altogether, thereby stripping the court of jurisdiction. The court could not, therefore, compel arbitration against the County before determining whether it had jurisdiction to do so.

- **COURT LACKED JURISDICTION TO INTERPRET CBA**

[*Int'l Assoc. of Sheet Metal, Air, Rail & Transportation Workers v Kansas City S. Railway Co.*](#)

United States Court of Appeals, Eighth Circuit

2025 WL 86532

January 14, 2025

SMART-TD, the union representing train employees, challenged the termination of train conductor Brandon Smith. The parties submitted to arbitration before the National Railroad Adjustment Board, which overturned the discharge and ordered reinstatement and back pay without deductions for outside earnings. SMART-TD petitioned to enforce the award. While the petition was pending, KCSR requested the Board to clarify whether outside earnings could be deducted from back pay, and how the back pay award would affect the calculation of paid vacation. KCSR then moved to dismiss the enforcement action, arguing that the award was "incomplete and ambiguous." The court denied the motion to dismiss, and ordered KCSR to provide full back pay and all vacation benefits. KCSR appealed.

The United States Court of Appeals, Eighth Circuit reversed and remanded. The RLA provides for exclusive arbitral jurisdiction of "minor disputes" that relate to "either the meaning or proper application of . . . a collective bargaining agreement." This provision strips the courts of any jurisdiction to interpret the CBA as the court below did here. Pending the appeal, the Board issued a clarification sustaining its award of back pay without deduction of outside earnings, rendering the question moot. However, the Board's restoration of "full benefits restored" was ambiguous as to the calculation of paid vacation. The issue was not brought before the Board in arbitration and remained subject to the Board's interpretation and clarification.

- **ARBITRATION AGREEMENT UNCONSCIONABLE**

[*Pappas v AMN Healthcare Services*](#)

United States District Court, N.D. California

2025 WL 50440

January 8, 2025

A group of travel nurses (Plaintiffs) sued AMN, a healthcare staffing agency, claiming that AMN had imposed pay cuts mid-contract, after the nurses had already incurred relocation costs, and threatened to blacklist nurses who failed to complete their contracts at the reduced rates. AMN moved to compel arbitration under Plaintiffs' Professional Services Agreements (PSAs). Plaintiffs opposed, arguing that the PSA's arbitration provision was procedurally and substantively unconscionable because 1) AMN pressured them to sign the PSA "immediately" because positions would "fill quickly"; 2) the provision incorporated JAMS arbitration rules without attaching or specifying which JAMS rules; 3) the provision's use of vague and confusing legal jargon imposed unfair surprise; and 4) the fee-shifting provision could result in employees bearing AMN's attorney fees and costs.

The United States District Court, N.D. California denied the motion to compel. The contract was unenforceable as unconscionable. The provision was procedurally unconscionable: the urgent time pressure and "take-it-or-leave-it" nature of the PSA rendered it a contract of adhesion, and its obfuscating language was challenging "even for a lawyer" to interpret. The provision's failure to attach or specify governing JAMS rules, however, was of no import: such omissions are unconscionable only where the rules themselves are unconscionable. The rules were substantively unconscionable in potentially saddling employees with AMN's attorney fees and

costs. California law prohibits an employer who imposes mandatory arbitration from requiring an employee to bear any type of expense the employee would not be required to bear if bringing the action in court. The court declined to sever the fee-shifting provision, as its “chilling effect” was disproportionately consequential in deterring employees from raising valid claims for fear of bearing costs they cannot afford.

Alabama

- **ARBITRATION AGREEMENT NOT FRAUDULENTLY INDUCED**

[Digital Forensics Corporation, LLC v King Machine, Inc.](#)

Supreme Court of Alabama

2025 WL 63935

January 10, 2025

King Machine hired Digital Forensics Corporation (DFC) to mine and produce electronic data that King needed for a pending litigation. King chose DFC based on DFC’s representations, on its website and through its employees, that it was capable and experienced at this work. It was not. DFC failed to produce; the court sanctioned King for discovery non-compliance; and King ultimately paid to have the work performed by another vendor. King sued DFC for fraudulent inducement, and DFC moved to compel arbitration under their contract. King opposed, arguing that the arbitration clause was “fraudulently induced and unenforceable.” The court denied DFC’s motion, and King appealed.

The Supreme Court of Alabama reversed. King’s claims rested on the premise that 1) DFC misrepresented its ability to perform forensic electronic services, and 2) those misrepresentations induced King to enter into an agreement for those services. King did not, however, allege that these misrepresentations induced it to enter into the arbitration provision specifically, and King could not avoid arbitration on that basis.

Case research and summaries by Deirdre McCarthy Gallagher and Rene Todd Maddox.

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