No. 25-1383

In the Supreme Court of the United States

INDIAN HARBOR INSURANCE CO., ET AL., PETITIONERS
V.
TOWN OF VINTON, ET AL., RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR *AMICUS CURIAE* AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA's member companies represent 66% of the overall U.S. property-casualty insurance market and 74% of the commercial market, including the vast majority of the maritime insurance market. On issues of importance to the insurance industry and marketplace, APCIA advocates sound and progressive public policies on

[1] Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae*, its members, or its counsel made any monetary contributions intended to fund the preparation or submission of this brief. *Amicus curiae* provided notice to all parties of its intent to file pursuant to Rule 37.2.

behalf of its members in legislative and regulatory forums at the federal and state levels, and submits *amicus curiae* briefs in significant cases before federal and state courts.

APCIA has a direct and substantial interest in this case because arbitration agreements are widely used in its members' insurance contracts. Those agreements appear not only in property insurance policies like the one at issue here, but in other types of insurance contracts and in commercial contracts more broadly. APCIA's members rely on the enforceability of these provisions to resolve disputes efficiently, predictably, and in the forum agreed to by the parties.

APCIA and its members have a strong interest in the uniform enforcement of international arbitration agreements according to the New York Convention and consistent federal-law principles. That uniformity is threatened by the United States Court of Appeals for the Fifth Circuit's refusal to enforce such an arbitration agreement based on an application of state-law principles. If the decision stands, insurers will lose the ability to structure their contracts to select, in advance, the forum and venue in which disputes will be resolved. For these reasons, and for the reasons set forth in the Petitioners' brief, *amicus curiae* the American Property Casualty Insurance Association respectfully urges the Court to grant the petition for a writ of certiorari and to hold that federal common law governs the enforceability of arbitration agreements falling under the New York Convention.

INTRODUCTION

International arbitration is a cornerstone of modern commerce. As this Court has long recognized, an advance agreement on the forum and governing law for dispute resolution is necessary to achieve order and predictability in international business transactions.

S*cherk v. Alberto-Culver Co.*, 417 U.S. 506, 516 (1974); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 631–33 (1985). This need is especially acute when parties contract with United States-based entities, whose agreements risk being measured by divergent bodies of state law. To guard against this risk, arbitration agreements falling under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, *adopted* June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 ("New York Convention" or "Convention") are entitled to uniform and predictable enforcement. *Scherk*, 417 U.S. at 520 n.15; *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 537-40 (1995). In fact, to ensure uniform enforcement and to prevent forum shopping or strategic jockeying, Congress gave federal courts jurisdiction over cases falling under the New York Convention. United States Courts of Appeals for the

First, Second, Fourth, and Ninth Circuits, applying a choice-of-law analysis, have held that federal common law and federal principles of enforcement govern arbitration agreements falling under the Convention. *InterGen N.V. v. Grina,* 344 F.3d 134, 143 (1st Cir. 2003); *Smith/Enron Cogeneration Ltd. P'ship, Inc. v. Smith Cogeneration Int'l, Inc.,* 198 F.3d 88, 96 (2d Cir. 1999), *abrogated on other grounds by Granite Rock Co. v. Int'l Bhd. of Teamsters,* 561 U.S. 287 (2010); *Aggarao v. MOL Ship Mgmt. Co.,* 675 F.3d 355, 373–75 (4th Cir. 2012); *Setty v. Shrinivas Sugandhalaya LLP,* 3 F.4th 1166, 1168 (9th Cir. 2021).

Predictability is especially important in the insurance sector. The understanding of where and how disputes will be resolved allows insurers to predict how their policy terms and conditions will be interpreted. This predictability is now in jeopardy. Here, a group of insurers offered coverage to

Respondents and conditioned their agreement on disputes being resolved in an arbitral forum and venue. Respondents accepted that condition. Because some of the insurers are foreign companies ("Foreign Insurers"), the insurers expected the arbitration agreements would be enforceable under the Convention, which requires courts to compel arbitration, irrespective of any local laws. That expectation has, until now, been consistently honored. Federal courts routinely enforce agreements, like this one, falling under the Convention, without reference to state-specific statutes or laws. *See Certain Underwriters at Lloyd's, London v. 3131 Veterans Blvd LLC,* 136 F.4th 404 (2d Cir. 2025). The decision below disturbs that settled expectation of uniform and predictable enforcement.

Insurers, including the members of APCIA, depend on uniform and predictable rules to price risks, allocate capital, and structure agreements that span borders. That dependence is most acute in the surplus lines market, where international insurers routinely join with domestic insurers to cover risks that would otherwise go uninsured. Consistent, nationwide enforcement of arbitration provisions under the Convention supplies the stability on which that market rests.

When insurers are subjected to shifting and inconsistent state-law principles, that stability collapses. An insurer confronting unquantifiable risk may be forced to raise premiums or withdraw from the market altogether, contributing to rising costs and shrinking availability already documented nationwide. *See* U.S. Department of the Treasury, *U.S. Department of the Treasury Report: Homeowners Insurance Costs Rising, Availability Declining as Climate-Related Events Take Their Toll*, Jan. 16, 2025, https://home.treasury.gov/news/press-releases/jy2791 (concluding that homeowners insurance costs and nonrenewal rates are rising, to the detriment of housing costs and home values) (last visited July 9, 2026). Consistent enforcement of policy conditions, including arbitration agreements, provides surplus lines insurers the predictability they need to insure complex and high-exposure risks.

Applying federal principles of enforcement to arbitration agreements falling under the New York Convention provides necessary uniform enforcement, and it accords with this Court's precedents. *Scherk*, 417 U.S. at 520 n.15; *Vimar*, 515 U.S. at 537-40. The Fifth Circuit departed from this straightforward approach, declining to fully enforce the agreements under Louisiana law. As a result, a single dispute is now split between two forums: an arbitral tribunal for the Foreign Insurers and a court for the American insurers ("Domestic Insurers"). Practically, every insurer must participate in both proceedings—both to protect its interests and because each possesses discoverable information. This dual-track process is especially prejudicial to the Foreign Insurers, whose arbitration agreements are stripped of the protection the Convention was meant to provide. Indeed, the Fifth Circuit itself has recognized that litigation between an insured and the Domestic Insurers can undermine the Foreign Insurers' arbitration rights. *See Crescent City Surgical Operating Co. v. Interstate Fire & Cas. Co.*, No. 25-30044, 2026 WL 1091579, at *5 (5th Cir. Apr. 22, 2026) (finding it "difficult to conceive" how such litigation would not critically impair the Foreign Insurers' arbitration rights); *Bufkin Enters., L.L.C. v. Indian Harbor Ins.* Co., 96 F.4th 726, 732 (5th Cir. 2024) (recognizing that, even where the insured dismisses the foreign insurers, their interest in the predictable enforcement of policy terms is impaired by domestic litigation). The Fifth Circuit permitted this fractured regime without conducting a choice-of-law analysis and without regard to the consistency concerns on which the Convention's prior uniform enforcement rested.

This departure leads to an unworkable framework for both insurers and non-insurer international contracting parties. Where such parties once could rely on their arbitration agreements being enforced in full, they now must consider whether state law might apply and whether that law will disturb the enforceability of their bargain, including their agreement to arbitrate. The decision below also invites early and repeated litigation aimed at capturing the most favorable forum. Such a regime is the antithesis of the Convention's purpose, which demands uniform and consistent enforcement. Federal common law, not the law of any State, must govern the enforceability of agreements falling under the Convention.

SUMMARY OF THE ARGUMENT

The decision below disturbs the predictable enforcement of international arbitration agreements, the foundation on which cross-border commerce is built. This Court has long held that an advance agreement to fix the forum and governing law for the resolution of disputes is "an almost indispensable precondition" to achieving the predictability that is essential to international business transactions. *Scherk*, 417 U.S. at 516. The international community codified the same commitment in the New York Convention, which commands the courts of contracting states to refer the parties to arbitration whenever a covered agreement applies. Convention, *supra*, art. II(3). The Convention's mandate is intentional. The Convention's drafters insisted that national courts not be permitted to decline enforcement on the basis of parochial views of their desirability. *Scherk*, 417 U.S. at 520 n.15.

This Court has recognized that predictable and uniform enforcement by the courts is required if the Convention is to achieve its purpose. *Mitsubishi*, 473 U.S. at 629; *Vimar,* 515 U.S. 528 (1995). Congress promoted that uniformity by enacting Chapter 2 of the Federal Arbitration Act ("FAA") and conferring federal jurisdiction over Convention cases, 9 U.S.C. §§ 201-208, so that the United States may speak with a federal voice in enforcing and applying international arbitration agreements consistently across the country.

Predictable and uniform enforcement is especially important in the business of insurance. An insurer can price and underwrite a risk only if it can anticipate how its policy will be construed and enforced, and this

Court recognized long ago that no commercial contract more requires "uniformity of the application of rules to it" than an insurance policy. *Peters v. Warren Ins.* Co., 39 U.S. (14 Pet.) 99, 109 (1840). The need is most acute in the surplus lines market, which insures the large and complex risks that admitted carriers cannot accept, including catastrophe-prone exposures along the Louisiana coast. In that market, foreign insurers subscribing through the Lloyd's of London market routinely join with domestic insurers to provide coverage. These insurers commit capital in reliance on the United States honoring its treaty obligation to enforce their agreements under uniform and predictable rules. When that predictability yields to inconsistent and shifting state law, insurers respond by raising premiums or withdrawing capacity. To

secure uniform rules of enforcement nationwide, federal common law must govern the enforcement and application of every agreement falling under the Convention—even where a nonsignatory invokes the agreement. The application of federal common law follows from a straightforward choice-of-law analysis under this Court's framework. *Boyle v. United Techs. Corp.*, 487 U.S. 500 (1988). Federal common law likewise resolves the equitable-estoppel question consistently with the Convention, foreclosing an insured from circumventing its agreement to arbitrate with the Foreign Insurers by litigating interdependent issues with their domestic counterparts.

The Fifth Circuit's contrary approach fractures a single dispute between two decisionmakers, compelling all insurers to litigate and arbitrate the same questions at once and leaving the Foreign Insurers with only partial arbitration rights for which they bargained. *Crescent City Surgical*, 2026 WL 1091579, at *3 (recognizing that the litigation with the domestic insurers denies the Foreign Insurers their request to arbitrate the entire dispute, but failing to apply federal common law to protect the Foreign Insurers' arbitration rights). That the insureds dismissed their claims against the Foreign Insurers does not cure the harm; if anything, the case for a uniform federal rule is strongest where artful pleading is employed to evade the Convention. Because the decision below disrupts settled commercial expectations, erodes confidence that United States courts will uniformly honor their treaty commitments, and injects uncertainty into an already strained insurance market, this Court should hold that federal common law governs the enforceability of arbitration agreements falling under the New York Convention.

ARGUMENT

I. THE DECISION BELOW UNDERMINES THE NEW YORK CONVENTION'S SAFEGUARDS FOR ARBITRATION AGREEMENTS

Parties to a contract can predetermine where and how disputes will be resolved. In doing so, they often select an arbitral venue and forum for resolution. Arbitration provides speed, neutrality, expertise, and predictability; it prevents tactical forum jockeying and fosters certainty. *Scherk*, 417 U.S. at 510-17 (explaining the benefits of arbitration); *Mitsubishi*, 473 U.S. at 631-33. Thus, arbitration agreements serve an important purpose in contracts, particularly in contracts involving international parties.

For these reasons, in part, Congress codified a liberal federal policy favoring arbitration in the FAA. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). The FAA's passage "reverse[d] centuries of judicial hostility to arbitration agreements," thus making arbitration agreements "valid, irrevocable, and enforceable." *Scherk*, 417 U.S. at 510-11; 9 U.S.C. § 2. This policy "applies with special force in the field of international commerce." *Mitsubishi*, 473 U.S. at 631. As this Court explained, "[a] contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is . . . an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction." *Scherk*, 417 U.S. at 516.

The importance of arbitration provisions in commercial transactions has also been recognized by the international community, which codified their enforceability in the New York Convention. The Convention, a multilateral treaty with over 160 signatories, requires contracting countries to recognize arbitration agreements.[2] Convention, *supra*, art. II(1), (3). It also directs their courts to compel arbitration, providing:

> 1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
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> * * *
>
> 3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, *shall*, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is

[2] *See* United Nations Office of Legal Affairs, *Convention on the Recognition and Enforcement of Foreign Arbitral Awards - List of Participant States*, https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002a36b (last visited July 10, 2026); New York Arbitration Convention, *Contracting States*, https://www.newyorkconvention.org/countries (last visited July 10, 2026).

> null and void, inoperative or incapable of being performed.

Id. (emphasis added).

The mandatory language in Article II is intentional. As this Court explained, "[i]n their discussion of [Article II], the delegates to the Convention voiced frequent concern that courts of signatory countries . . . should not be permitted to decline enforcement of such agreements on the basis of parochial views of their desirability or in a manner that would diminish the mutually binding nature of the agreements." *Scherk*, 417 U.S. at 520 n.15. Courts are mandated to uniformly enforce arbitration agreements because an agreement without predictable enforcement loses much of its value.

Congress also took action to ensure the New York Convention was enforceable to its fullest extent when it passed Chapter 2 of the FAA to address possible jurisdictional and venue issues before the Convention took effect in the United States. 9 U.S.C. §§ 201-208; *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 439 (2020). This legislation gave federal courts jurisdiction over cases falling under the New York Convention, an important step to promote national uniformity and a single federal voice in enforcing the Convention. *See* 9 U.S.C. §§ 201-208; *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 388 (4th Cir. 2012). This assures foreign businesses, including foreign insurers and their domestic partners, that the same arbitration provision will be enforced regardless of where a dispute occurs. *See Goshawk Dedicated v. Portsmouth Settlement Co. I,* 466 F. Supp. 2d 1293, 1305—1306 (N.D. Ga. 2006) (noting that policies recognized in the context of international commerce strongly favor enforcement of international arbitration clauses).

Without uniform application by the courts, these measures cannot achieve their purpose. This Court has acknowledged that the courts of contracting states must uniformly enforce these agreements for the New York Convention to be effective. *Scherk,* 417 U.S. at 516—19; *Mitsubishi,* 473 U.S. at 629; *Vimar,* 515 U.S. at 528.

By enforcing arbitration agreements according to inconsistent—and potentially shifting—rules of local law, the Fifth Circuit's approach undermines the reliability of such agreements in international commercial transactions. The consequences of allowing rapidly shifting local law to govern international arbitration agreements are illustrated by the events that followed the Louisiana Supreme Court's decision in *Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.,* 395 So. 3d 717, 722 (La. 2024). Its issuance precipitated a wave of litigation, as insureds returned to court seeking to unwind orders compelling arbitration that had previously been entered. Moreover, courts confronting materially indistinguishable circumstances arrived at divergent conclusions. *Compare Certain Underwriters at Lloyd's, London v. Belmont Commons LLC,* No. 22-3874, 2025 WL 239087, at *1 (E.D. La. Jan. 17, 2025)*; Crescent City Surgical Operating Co. v. Certain Underwriters at Lloyd's, London,* 2025 WL 239404, at *1 (E.D. La. Jan. 17, 2025); *3501 N. Causeway Assocs., LLC v. Certain Underwriters at Lloyd's, London,* 348 F.R.D. 298 (E.D. La. 2025); *Apex Hosp. Grp., LLC v. Indep. Specialty Ins. Co.,* No. 23-2060, 2025 WL 457874, at *1 (E.D. La. Feb. 11, 2025) *(allowing the insured to litigate against some insurers despite acknowledging that it must arbitrate against others); with Bros. Petroleum, L.L.C. v. Certain Underwriters at Lloyd's, London,* No. 23-445, 2024 WL 4443966, at *1 (E.D. La. Oct. 8, 2024);

Par. of Lafourche v. Indian Harbor Ins. Co., No. 23-3472, 2025 WL 754333, at *10 (E.D. La. Mar. 10, 2025)*; Arrive Nola Hotel, LLC v. Certain Underwriters at Lloyd's, London,* 776 F. Supp. 3d 404, 419 (E.D. La. 2025); *Olsen Sec. Corp. v. Certain Underwriters at Lloyd's London,* No. 22-3120, 2025 WL 1370445, at *1 (E.D. La. May 12, 2025) *(finding that the insured must arbitrate all claims with all insurers applying federal equitable-estoppel principles); and Charles House Condo. Ass'n, Inc. v. Old Republic Union Ins. Co.,* No. 22-2513, 2025 WL 1068256, at *2 (E.D. La. Apr. 9, 2025) (enforcing arbitration for all insurers under the Convention); *and Par. of St. Charles v. HDI Glob. Specialty SE,* No. 22-3404, 2025 WL 1142397, at *2 (E.D. La. Apr. 17, 2025) (forgoing decision pending the ruling of the Fifth Circuit). An arbitration agreement subject to uncertainty of this magnitude cannot reliably fulfill its essential purpose: to furnish a stable, uniform, and predictable mechanism for the resolution of disputes.

II. THE QUESTION PRESENTED HAS BROAD NATIONAL CONSEQUENCES FOR INTERNATIONAL COMMERCE AND THE INSURANCE MARKET

Predictability is especially important when underwriting an insurance policy because insurers must understand the scope of the risk they are agreeing to insure. This scope is outlined by the insurance contract, a contract the insurers and insureds presume will be uniformly enforced. As this Court recognized more than a century ago, "if there be any commercial contract which, more than any other, requires…the uniformity of the application of rules to it, it is certainly a policy of insurance." *Peters*, 39 U.S. at 109. By including an arbitration provision that predetermines where and how disputes will be resolved, insurers can more accurately determine how their terms and conditions will be enforced. Insurers rely on the provisions' enforceability when underwriting challenging risks.

This is particularly true in the surplus lines market, which fills a critical gap in the marketplace by insuring risks that are generally uninsurable. These are often unique, large, or high risks, such as those in Louisiana coastal areas. Wholesale & Specialty Ins. Ass'n, *An Introduction to the Surplus Lines Market*, https://www.wsia.org/common/Uploaded%20files/docs/PDF/About/Introduction_to_Surplus_Lines_Market.pdf (last visited July 1, 2026). In 2024, surplus lines insurers wrote $131 billion in premium in the United States, approximately $30 billion of which was written by foreign insurers. *Id.* Many of these insurers provide coverage through the Lloyd's of London insurance market. *Id.* Unlike traditional insurance companies, the Lloyd's market allows participating members to insure a portion of a risk on a subscription basis. *Underwriters at Lloyd's, London v. Osting-Schwinn*, 613 F.3d 1079, 1083—84 (11th Cir. 2010). Foreign surplus lines insurers subscribing through the Lloyd's market often partner with domestic insurers. They do so with the expectation that the United States will live up to its treaty obligations and provide uniform and predictable rules of decision when interpreting their agreements. The lower court's decision challenges this expectation.

Any business engaging in commerce needs to predict risks and rely on agreements being interpreted and enforced under predictable standards. That need is especially acute for foreign entities transacting business in the United States, which must be able to trust that courts will consistently enforce governing treaties such as the New York Convention. In the insurance market, a lack of uniform enforcement contributes to reduced availability of coverage and higher costs—particularly for complex, high-severity risks. Applying a consistent body of federal common law best serves the goal of predictable, nationwide enforcement standards.

III. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS AND THE UNITED STATES' TREATY OBLIGATIONS, AND ONLY THIS COURT CAN RESTORE THE UNIFORMITY THE CONVENTION REQUIRES

In this case, the Fifth Circuit applied state law in a manner that conflicts with established precedent and the objectives of the Convention. Foreign and domestic insurers jointly agreed to insure the property, and that coverage was extended on the condition that disputes be resolved through arbitration. The lower courts construed the policy as separate agreements between Respondents and each insurer. Even if that reading is correct, the agreements with the foreign insurers fall within the Convention, because they are written, arise out of a commercial relationship, provide for arbitration in a Convention state, and involve foreign insurers. *See* 9 U.S.C. § 202; *Bufkin*, 96 F.4th at 730 (explaining that the signatories to the arbitration agreements subject to the Convention are the insured and the foreign insurers, and that the domestic insurers are nonsignatories seeking to enforce the foreign insurers' agreements). Because those criteria are met, the Convention and Chapter 2 of the FAA govern the enforcement analysis and require arbitration unless the agreement is "null and void, inoperative or incapable of being performed." Convention, *supra*, art. II(3). The Fifth Circuit did not require arbitration under this framework. Instead, it allowed the Respondents to circumvent their arbitration agreements, including the ones with the Foreign

Insurers. It did so by applying state equitable-estoppel principles to the domestic insurers' motion to compel arbitration, even though it recognized that the Convention governed the Foreign Insurers' agreements to arbitrate. *Town of Vinton v. Indian Harbor Ins. Co.*, 161 F.4th 282, 287 (5th Cir. 2025); see also *Crescent City Surgical*, 2026 WL 1091579, at *4; *Bufkin*, 96 F.4th at 730 (acknowledging that the agreements between the insured and the foreign insurers are subject to the New York Convention). Federal common law, not Louisiana law, governs enforcement of this Convention arbitration agreement. This result follows from this Court's two-part framework established in *Boyle v. United Techs. Corp.* for determining when federal common law, rather than state law, should apply, specifically: (1) where a "significant conflict" exists between an identifiable federal policy or interest and the operation of state law, or (2) where the application of state law would frustrate specific objectives of federal legislation. *Boyle*, 487 U.S. at 504. Both conditions are met here. First, the "overarching federal concern with the uniformity of treatment of international arbitration agreements," constitutes an identifiable federal policy or interest. *Certain Underwriters at Lloyd's, London v. Argonaut Ins. Co.*, 500 F.3d 571, 579 (7th Cir. 2007); *MouseBelt Labs Pte. Ltd. v. Armstrong*, 674 F. Supp. 3d 728, 739 (N.D. Cal. 2023); *Prcic v. Carnival Corp.*, 641 F. Supp. 3d 1313, 1318 (S.D. Fla. 2022). Second, Louisiana's anti-arbitration statutes frustrate the Convention's pro-enforcement mandate. *See Police Jury,* 395 So. 3d at 722; *Arrive,* 776 F. Supp. 3d at 416-17 (conducting a *Boyle* analysis on similar facts).

In contrast with Louisiana law, federal common law resolves the equitable-estoppel issue in a manner consistent with the Convention's goals. As a matter of fairness, federal courts have consistently held that an entity that has no relationship to an arbitration provision may nonetheless compel arbitration if the claimant alleges "substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract." *Grigson v. Creative Artists Agency, LLC*, 210 F.3d 524, 527 (5th Cir. 2000). That standard is met here because Respondents allege coordinated misconduct by all insurers arising from a joint investigation, adjustment, and payment decision.

Under *Grigson*, enforcement is particularly appropriate here. The domestic insurers are not strangers to the arbitration agreement; they subscribed to it alongside the foreign insurers as a condition of "one overarching policy." *Town of Vinton*, 161 F.4th at 286. *See also Crescent City Surgical,* 2026

WL 1091579, at *5 (explaining that, although the policy was construed as separate contracts with each insurer, it nonetheless functions as a unified insurance agreement intended to furnish seamless coverage). The insurers reasonably expected that their arbitration rights would be enforced under the Convention's uniform framework. *See Johnson v. NCL (Bahamas) Ltd.*, 163 F. Supp. 3d 338, 360 n.233 (E.D. La. 2016) (citing *Bautista v. Star Cruises,* 396 F.3d 1289, 1302 (11th Cir. 2005)); *DiMercurio v. Sphere Drake Ins. PLC*, 202 F.3d 71, 79 (1st Cir. 2000)) (agreements governed by the Convention must be enforced absent defenses capable of neutral and uniform application on an international scale). By adopting a state-law approach, the Fifth Circuit unsettled those reasonable expectations and, in so doing, frustrated the Convention's central objective of uniform and predictable enforcement.

The Foreign Insurers' expectation of arbitrating the entire dispute was likewise frustrated. Indeed, the Fifth Circuit has acknowledged that anything less than the full enforcement harms foreign insurers by affording them only "half a loaf" of the arbitration rights for which they bargained. *Crescent City Surgical*, 2026 WL 1091579, at *3. Where, as here, the claim was presented, adjusted, and decided jointly, the foreign insurers are, as a practical matter, drawn into discovery and other litigation burdens notwithstanding their enforceable arbitration agreement. That dynamic deprives the foreign insurers of the benefits of arbitration and undermines the uniform, predictable enforcement regime the Convention intended to secure. That Respondents dismissed their claims against the foreign insurers is of no moment. If anything, the case for uniform federal enforcement rules is at its strongest when litigants use artful pleading to circumvent the Convention. To countenance such maneuvering would erode confidence that international agreements will be honored in United States courts and would inject further uncertainty into the insurance market.

CONCLUSION

The New York Convention promises international contracting parties one thing above all: that their agreements to arbitrate will be enforced uniformly and predictably, without regard to the parochial law of any single State. The decision below breaks that promise. By measuring a Convention arbitration agreement against Louisiana law, the Fifth Circuit fractured a single dispute between two decisionmakers, left the Foreign Insurers with only a fraction of the arbitration rights for which they bargained, and invited the very forum-shopping and inconsistent outcomes the Convention was designed to foreclose.

The consequences reach well beyond this case. Insurers, and the surplus lines market in particular, enter into agreements relying on nationwide, predictable enforcement of the policy terms they write. When that predictability yields to shifting state law, coverage becomes costlier and scarcer precisely where it is needed most. A uniform federal rule is the answer that the Convention, this Court's precedents, and the framework established in *Boyle v. United Techs. Corp.* all require.

For these reasons, and those stated by Petitioners, *amicus curiae,* the American Property Casualty Insurance Association respectfully urges the Court to grant the petition for a writ of certiorari and to hold that federal common law governs the enforceability of arbitration agreements falling under the New York Convention.

Respectfully submitted,

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