

No. 26-_____

IN THE

Supreme Court of the United States

INTERSTATE FIRE & CASUALTY COMPANY;
INDEPENDENT SPECIALTY INSURANCE COMPANY;
VELOCITY RISK UNDERWRITERS L.L.C.;
CERTAIN UNDERWRITERS AT LLOYD'S, LONDON,
SUBSCRIBING TO POLICY No. VPC-CN-0002838-01,
improperly named CERTAIN UNDERWRITERS AT
LLOYDS, CONSORTIUM No. 9226,

Petitioners,

v.

CRESCENT CITY SURGICAL OPERATING COMPANY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal common law or state law supplies the rule of equitable estoppel that determines when a nonsignatory may enforce an arbitration agreement governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

PARTIES TO THE PROCEEDINGS

Petitioners are Interstate Fire & Casualty Company; Independent Specialty Insurance Company; Velocity Risk Underwriters L.L.C.; and Certain Underwriters at Lloyd's, London, subscribing to Policy No. VPC-CN-0002838-01 (collectively "Insurers").

Respondent is Crescent City Surgical Operating Company ("Crescent").

None of the parties are publicly listed on a stock exchange.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sup. Ct. R. 29.6, Petitioners disclose the following:

Interstate Fire & Casualty Company. Interstate Fire & Casualty Company ("IFC") is an Illinois corporation with its principal place of business in Chicago, Illinois. Interstate Fire & Casualty Company is a wholly owned subsidiary of Fireman's Fund Insurance Company. Fireman's Fund Insurance Company is a wholly owned subsidiary of Allianz Global Risks US Insurance Company ("AGR US"). Allianz of America, Inc. is the parent corporation for AGR US and owns eighty percent of its voting stock. The remaining twenty percent of the AGR US voting stock is owned by AGCS International Holding B.V. Each of Allianz of America, Inc. and AGCS International Holding B.V. is a wholly owned indirect subsidiary of Allianz SE, a publicly traded company. Thus, Allianz SE indirectly owns ten percent or more of Interstate Fire & Casualty Company. Allianz SE is publicly traded on the Frankfurt Stock Exchange under the ticker symbol ALV.

Velocity Risk Underwriters, LLC. Velocity Risk Underwriters (“VRU”) is a series of RSG Specialty, LLC. RSG Specialty, LLC’s parent company is Ryan Specialty, LLC, which is a subsidiary of Ryan Specialty Holdings, Inc. Ryan Specialty Holdings, Inc. is a publicly traded company under ticker symbol RYAN.

Certain Underwriters at Lloyd’s, London (Consortium #9226). Certain Underwriters at Lloyd’s, London Consortium #9226 are composed of members subscribing through:

Syndicate 2357. The sole member of Syndicate 2357 is Nephila 2357 Ltd. Nephila operates under Nephila Holdings Ltd., which is a wholly owned subsidiary of Markel Group Inc., which is a publicly traded corporation on the New York Stock Exchange. The stock ticker symbol is MKL.

Syndicate 1458. RenaissanceRe Corporate Capital (UK) Limited is the sole member of Syndicate 1458. The parent corporation of RenaissanceRe Corporate Capital (UK) Limited is Renaissance Reinsurance Ltd. The parent corporation of Renaissance Reinsurance Ltd. is RenRe Insurance Holdings Ltd. The parent company of RenRe Insurance Holdings Ltd. is RenaissanceRe Holdings Ltd., which is a publicly traded corporation on the New York Stock Exchange. The stock ticker symbol is RNR.

Independent Specialty Insurance Company. Independent Specialty Insurance Company (“ISIC”), a Delaware domestic company and wholly owned subsidiary of FMV Holding Company, changed its name to Velocity Specialty Insurance Company (“VSIC”). FMV Holding Company is majority owned by

FMIC Holdings, Inc. (“FMIC Holdings”), and FMIC Holdings is a wholly owned subsidiary of Factory Mutual Insurance Company (“FMIC”), a mutual company, which is not publicly held.

RELATED PROCEEDINGS

United States Court of Appeals for the Fifth Circuit:

Crescent City Surgical Operating Co. v. Interstate Fire & Casualty Co., No. 25-30044 (5th Cir. Apr. 22, 2026).

United States District Court for the Eastern District of Louisiana:

Crescent City Surgical Operating Co. v. Certain Underwriters at Lloyd's, London, No. 2:22-CV-2625 (E.D. La. Jan. 17, 2025) (order granting in part and denying in part motion to reconsider orders enforcing arbitration).

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INTRODUCTION

1. This case presents an important and recurring question of federal arbitration law that has divided the courts of appeals and that this Court expressly left open in *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 445 (2020): When a nonsignatory seeks to enforce an arbitration agreement governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”), does federal common law or state law supply the rule of equitable estoppel? The courts of appeals have answered that reserved question in irreconcilable ways and the issue is ripe for review.

2. This dispute arises out of a property insurance coverage dispute the parties agreed to arbitrate. Crescent City Surgical Operating Company (“Crescent”) obtained coverage under a single policy (the “Policy”) subscribed to by English companies participating through the Lloyd’s of London insurance market (the “Foreign Insurers”) and U.S. companies (the “Domestic Insurers”) (collectively, the “Insurers”). As a condition of the Policy, Crescent agreed to arbitrate any dispute. App. 2a-3a, 13a-16a.

Crescent sued the Insurers for coverage under the Policy. App. 3a. On the Insurers’ unopposed motion, the district court enforced arbitration of the entire dispute under the Convention. App. 3a, 14a. While that arbitration was pending, the Louisiana Supreme Court answered certified questions of state law in *Police Jury of Calcasieu Parish v. Indian Harbor Ins. Co.*, 2024-CQ-00449 (La. 10/25/24), 395 So. 3d 717. Relevant here, it held that a domestic insurer may not enforce arbitration, whether directly or through equitable estoppel, because La. Stat. Ann. § 22:868 prohibits

arbitration clauses in insurance policies issued in the State and estoppel cannot contravene that positive law. *Id.* at 729. In the wake of that decision, the district court reversed course as to the Domestic Insurers, holding their agreements unenforceable and rejecting their alternative invocation of equitable estoppel as a basis for them to enforce the Foreign Insurers' Convention-covered agreements. App. 23a–31a. Its order enforcing arbitration with the Foreign Insurers was left undisturbed. App. 26a–33a.

3. The result would have been the opposite in the First, Second, Fourth, or Ninth Circuit, which apply federal common law to the equitable estoppel analysis for Convention agreements. Here, the court below made findings that satisfy every element of federal equitable estoppel, yet, enforcing state law, declined to apply it. The Seventh Circuit recently joined the Fifth, despite recognizing that “four circuits have held that federal common law provides the rule of equitable estoppel for agreements governed by Chapter 2.” *Kim v. Jump Trading, LLC*, No. 25-1964, 2026 WL 2348464, at *5 (7th Cir. Aug. 13, 2026).

4. The decision below is wrong. Congress enacted Chapter 2 of the Federal Arbitration Act (“FAA”) to secure a single, uniform federal standard for enforcing Convention arbitration agreements. Yet the Fifth Circuit extended a Chapter 1 rule to a Chapter 2 agreement without conducting the choice-of-law analysis required by *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988). In so doing, it allowed Louisiana’s anti-arbitration statute to frustrate the important federal interest in predictably and consistently fulfilling the United States’ obligations under the Convention. The conflict is not abstract. In this case, a single dispute was split into two forums,

precisely the piecemeal enforcement the Convention's uniform rule seeks to prevent.

5. The question presented is already pending before the Court in the *Town of Vinton* petition, and this case underscores why it merits review. The district court first compelled arbitration of the entire dispute, then partially reversed course based on state law. Yet the Fifth Circuit's findings establish that federal equitable estoppel would apply, making the choice of law question outcome-determinative. The result was a single dispute split between two forums, the very piecemeal enforcement that the Convention's uniform rule is meant to prevent. The Court should hold this petition pending its disposition of *Indian Harbor Ins. Co. v. Town of Vinton*, No. 25-1383, and then dispose of this petition as appropriate in light of that decision. If the Court concludes that *Town of Vinton* is not a suitable vehicle, it should grant this petition.

OPINIONS BELOW

The Fifth Circuit's decision under review is *Crescent City Surgical Operating Co. v. Interstate Fire & Cas. Co.*, No. 25-30044, 2026 WL 1091579 (5th Cir. Apr. 22, 2026). App. 1a. That decision affirmed, in part, the order of the United States District Court for the Eastern District of Louisiana (No. 2:22-CV-2625) lifting the arbitration stay as to Domestic Insurers, entered January 17, 2025, and reproduced at App. 15a. In so doing, the Fifth Circuit adopted and followed its decision in *Town of Vinton v. Indian Harbor Ins. Co.*, 161 F.4th 282 (5th Cir. 2025). App. 9a-11a. This petition accordingly asks the Court to review, and ultimately reject, the rule announced in *Town of Vinton* and applied in the decision below.

JURISDICTION

1. The district court had jurisdiction over the Insurers' motions to compel arbitration under 28 U.S.C. § 1331, because "[a]n action or proceeding falling under the [Convention] . . . shall be deemed to arise under the laws and treaties of the United States." 9 U.S.C. § 203; *see also* Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II(1), June 10, 1958, 21 U.S.T. 2517, 2519. The Insurers' motion to compel arbitration sought to enforce an arbitration agreement that falls under the Convention because it arises out of a commercial relationship, is in writing, and at least one party to the agreement is not an American citizen. 9 U.S.C. §§ 202, 206.

2. Crescent did not oppose the Insurers' original Motion to Compel Arbitration, and the district court granted it. App. 14a. After the Louisiana Supreme Court's decision in *Police Jury*, 395 So. 3d 717, in which that court answered certified questions of Louisiana law, Crescent asked the district court to revisit its original decision and allow Crescent to circumvent its arbitration agreement. App. 13a. The district court agreed, and the Insurers appealed that decision while the arbitration with the Foreign Insurers moved forward. The court of appeals had jurisdiction to review those orders under 9 U.S.C. § 16(a)(1)(C), which authorizes interlocutory appeals from orders declining to enforce arbitration under the Convention.

3. The decision of the Fifth Circuit from which this petition is taken was entered on April 22, 2026. App. 1a. On July 16, 2026, Justice Alito extended the time to file a petition for a writ of certiorari to August 20, 2026. On August 14, 2026, Justice Alito further extended the time to file a petition for a

writ of certiorari to September 19, 2026. Because September 19, 2026, fell on a Saturday, this petition is timely filed on the next business day, September 21, 2026. *See* Sup. Ct. R. 30.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Supremacy Clause, U.S. Const. art. VI, cl. 2, which provides in relevant part that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land”; Chapter 2 of the Federal Arbitration Act (FAA), 9 U.S.C. §§ 201–208; and portions of the Convention. The relevant provisions of each are reproduced in the appendix. *See* App. 34a-37a.

STATEMENT

A. Legal background

1. The Convention’s history and text confirm a single, overriding aim: consistent and uniform enforcement of international arbitration agreements. The United States has long favored the enforcement of arbitration provisions, a policy that “applies with special force in the field of international commerce.” *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985). This is because the United States is a party to the Convention, an international treaty that requires the courts of signatory countries to enforce written arbitration agreements. *See* Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. II(3), June 10, 1958, 21 U.S.T. 2517, 2519.

The Convention provides that courts of signatory states “shall” refer parties to arbitration when their

agreement falls under the Convention, *id.* art. II(3), mandatory language that was intended to promote uniformity and predictability in enforcement. As the Supreme Court explained, “[i]n their discussion of [Article II], 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 v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974) (citations omitted). The directive to courts ensures uniform recognition and enforcement of arbitration provisions.

2. The United States did not sign the Convention until 1970, in part because “certain provisions of the Convention were in conflict with some of our domestic laws.” *ESAB Grp., Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 381-82 (4th Cir. 2012) (quotations omitted). To make the Convention fully enforceable, Congress enacted Chapter 2 of the FAA to address jurisdictional and venue issues before the Convention took effect in the United States. *Id.* These changes gave federal courts jurisdiction over cases implicating the Convention. This was important to maintain uniform enforcement of the Convention in the United States. *Id.* at 388. Indeed, a central purpose of both the Convention and Chapter 2 was to establish uniform rules governing the recognition and enforcement of international arbitration awards. See *InterGen N.V. v. Grina*, 344 F.3d 134, 143–44 (1st Cir. 2003).

3. As this Court explained, “concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the need of the international commercial system for predictability

in the resolution of disputes require that we enforce the parties' agreement, even assuming that a contrary result would be forthcoming in a domestic context." *Mitsubishi Motors*, 473 U.S. at 629 (emphasis added).

4. An agreement falls under the Convention where it is (1) an agreement in writing; (2) that provides for arbitration in a signatory nation, like the United States; (3) that also arises out of a commercial legal relationship; and (4) a party to the agreement is not an American citizen or the commercial relationship has a reasonable relation to a foreign state. *See Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co.*, 767 F.2d 1140, 1144 (5th Cir. 1985) (citing *Ledee v. Ceramiche Ragno*, 684 F.2d 184, 185–86 (1st Cir. 1982)). To determine whether an agreement falls under the Convention, the district court conducts a "very limited inquiry" of these factors. *Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 339 (5th Cir. 2004). The lower courts agree that Crescent and the Foreign Insurers entered into agreements enforceable under the Convention. App. 10a.

When an arbitration agreement falls under the Convention, a state statute that prohibits arbitration, such as La. Stat. Ann. § 22:868, is preempted by the Convention and cannot bar enforcement. *See McDonnell Grp., LLC v. Great Lakes Ins. SE, UK Branch*, 923 F.3d 427, 432 (5th Cir. 2019) ("Because the state statute, i.e., La. Rev. Stat. Ann. § 22:868, is preempted by the Convention, the statute does not and cannot apply to [the insured's] policy."). For this reason, the courts of appeals have routinely enforced arbitration agreements that fall under the Convention, notwithstanding prohibitive state statutes, and have held that Louisiana's insurance statute does not reverse-preempt the Convention under the McCarran-

Ferguson Act. See *Certain Underwriters at Lloyd's, London v. 3131 Veterans Blvd. LLC*, 136 F.4th 404, 410–11 (2d Cir. 2025); *McDonnell Grp.*, 923 F.3d at 431–32. Likewise, this Court has acknowledged the Convention's policy of broad enforcement. See *Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer*, 515 U.S. 528, 538–39 (1995); *Scherk*, 417 U.S. at 519–20. Given the Convention's broad policy in favor of enforcing agreements that fall within its ambit, the threshold question is whether the arbitration agreement falls under the Convention.

5. Here, the Domestic Insurers seek to enforce the Foreign Insurers' arbitration agreements, via the doctrine of equitable estoppel. Equitable estoppel is a contract law doctrine that allows a nonsignatory to enforce a written arbitration agreement. 21 Richard A. Lord, *Williston on Contracts* § 57:19 (4th ed. 2020 & Supp. 2026). The doctrine applies where a signatory “must rely on the terms of that agreement in asserting its claims against the nonsignatory or where the signatory to the written agreement raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.” *Id.* Applied to this case, equitable estoppel prevents Crescent from invoking the Policy's benefits while simultaneously evading its promise to arbitrate and raise allegations of substantially interdependent and concerted misconduct between the Foreign and Domestic Insurers. In *GE Energy*, this Court held that the Convention permits “enforcement of arbitration agreements by nonsignatories under domestic-law equitable estoppel doctrines.” 590 U.S. at 445. But it did not decide “which body of law governs that determination.” *Id.* The Convention's goals and history supply the answer to the question *GE Energy* left open.

B. Factual and procedural background

1. Petitioners are a group of insurance companies that subscribed to the same insurance policy. Two of the insurers are English private limited companies that subscribed to the Policy through the Lloyd's of London insurance market; the other insurers are domestic (i.e., U.S.) companies. App. 13a–14a. Crescent and the Insurers were bound by a single insurance policy containing one arbitration clause, under which they agreed to resolve disputes through arbitration as a condition of the Policy. App. 13a–14a.

Following Hurricane Ida, Crescent reported a claim, which the Insurers jointly investigated and denied for Crescent's failure to cooperate and to submit to an examination under oath. App. 3a. Crescent challenged that determination by filing a lawsuit against all Insurers, not differentiating between the conduct of the Foreign Insurers and Domestic Insurers. App. 17a.

2. The Insurers removed the action to the Eastern District of Louisiana under 9 U.S.C. §§ 203 and 205 and moved to enforce arbitration. App. 3a. Crescent did not oppose the motion, and on January 27, 2023, the district court enforced arbitration of the entire dispute. App. 3a, 14a. An arbitration panel was selected, a scheduling order issued, and an arbitration hearing was set for April 2025. App. 4a.

Less than four months before the arbitration hearing, and nearly two years after arbitration had been ordered, Crescent moved to lift the stay and reconsider the order enforcing arbitration, based on the Louisiana Supreme Court's decision in *Police Jury*. App. 4a. The district court granted the motion as to the Domestic Insurers and thus split a single insurance dispute into two simultaneous proceedings on

identical issues arising from the same claim:
1) litigation against the Domestic Insurers and
2) arbitration against the Foreign Insurers. App. 27a.

The Insurers timely appealed under 9 U.S.C. § 16. App. 4a. Arbitration against the Foreign Insurers moved forward during the appeal. On April 22, 2026, the Fifth Circuit affirmed the district court's order in part, declining to enforce arbitration of the claims against the Domestic Insurers. App. 3a.

3. The decision below construed the single insurance policy as separate contracts between the insured and each insurer, and it treated the Policy's one arbitration clause as a set of separate arbitration agreements. App. 9a-10a. Proceeding from that premise, the court enforced the arbitration agreements between the insured and the Foreign Insurers under the Convention, but held that La. Stat. Ann. § 22:868 barred enforcement of the agreements as to the Domestic Insurers. App. 12a. The court also applied Louisiana equitable estoppel principles, without undertaking a *Boyle* choice-of-law analysis, to reject the Domestic Insurers' argument that Crescent was estopped from circumventing the Convention by litigating against the Domestic Insurers the same claims it was arbitrating against the Foreign Insurers. Petitioners now seek review.

REASONS FOR GRANTING THE PETITION

The petition satisfies this Court's traditional criteria for review. At bottom, the case turns on whether the Convention and Chapter 2 of the FAA require a uniform federal rule for determining whether a nonsignatory may invoke equitable estoppel to enforce a Convention-governed arbitration agreement. Under the decision below, that determination depends on

inconsistent state laws, rather than on a single federal standard. The conflict is also growing. The Fifth Circuit’s approach has now been joined by the Seventh Circuit, and both depart from the rule applied in the First, Second, Fourth, and Ninth Circuits. Review is warranted.

I. The Courts of Appeals Are Divided 4–2 on the Question Presented.

A. Four circuits apply federal common law to honor the Convention’s goal of uniform enforcement.

The federal courts of appeals are divided over whether federal common law or state law governs whether a nonsignatory may invoke equitable estoppel to enforce an arbitration agreement governed by the Convention. The First, Second, Fourth, and Ninth Circuits apply a uniform federal rule of decision. *See InterGen*, 344 F.3d at 143; *Smith/Enron Cogeneration Ltd. P’ship, Inc. v. Smith Cogeneration Int’l, Inc.*, 198 F.3d 88, 96 (2d Cir. 1999); *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GmbH*, 206 F.3d 411, 417 (4th Cir. 2000); *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). Those courts apply federal common law because a uniform rule is necessary to honor the Convention’s goal of “unify[ing] the standards by which agreements to arbitrate are observed.” *Scherk*, 417 U.S. at 520 n.15.

The Second Circuit was the first to confront the question. In *Smith/Enron*, it held that when courts “exercise jurisdiction under Chapter 2 of the FAA,” they “have compelling reasons to apply federal law ... to the question of whether an agreement to arbitrate

is enforceable,” because “proceeding otherwise would introduce a degree of parochialism and uncertainty into international arbitration that would subvert the goal of simplifying and unifying international arbitration law.” 198 F.3d at 96. The First Circuit followed in *InterGen*, reasoning that because Convention cases invoke federal question jurisdiction, courts must “look to federal choice of law principles,” and that where “the federal statute in question demands national uniformity, federal common law provides the determinative rules of decision.” *InterGen*, 344 F.3d at 143. The Convention demands such uniformity, the court explained, because a “central goal of the New York Convention—and the driving force behind Congress’s enactment of chapter 2—was to set out uniform rules,” and “[a]pplying varying state standards in cases falling within the Convention’s ambit would be in tension with” the treaty’s “elemental purpose.” *Id.* The Ninth Circuit reached the same result in *Setty*, holding that because “[t]he New York Convention and its implementing legislation emphasize the need for uniformity in the application of international arbitration agreements,” courts must apply “federal substantive law” “in determining the arbitrability of federal claims by or against nonsignatories.” 3 F.4th at 1168. And the Fourth Circuit in *Aggarao* likewise applied federal equitable estoppel principles to determine whether a nonsignatory could enforce arbitration under the Convention. 675 F.3d at 373–75. Although four of these decisions predate *GE Energy*, their rationale, that the Convention’s demand for national uniformity requires a federal rule of decision, stands.

B. The Fifth Circuit, now joined by the Seventh, applies state law.

The decision below adopted the opposite rule, holding that state law governs. App. 1a; *see Town of Vinton*, 161 F.4th at 287–88. The Fifth Circuit’s approach has now been joined by the Seventh Circuit, which acknowledged the circuit split in *Kim v. Jump Trading, LLC*, No. 25-1964, 2026 WL 2348464 (7th Cir. Aug. 13, 2026). In the decision, Judge Easterbrook observed that “four circuits have held that federal common law provides the rule of equitable estoppel for agreements governed by Chapter 2,” but “agree[d] with *Vinton*” that state law applies instead. *Id.* at *5–6. The Seventh Circuit applied the rule in a commercial context unrelated to insurance, confirming that the disagreement is not confined to any single industry. Only this Court can resolve the 4–2 division among the circuits.

II. The Outlier Application of State Law Cannot Be Reconciled With the Convention’s Uniform Enforcement Purpose.

A. Under *Boyle*, federal common law governs because uniform enforcement of the Convention is a uniquely federal interest.

When a nonsignatory seeks to enforce a Convention-governed arbitration agreement through equitable estoppel, federal common law must supply the rule of decision. The First, Second, Fourth, and Ninth Circuits so hold. *See supra* Part I. That conclusion follows from this Court’s *Boyle* framework for identifying when federal common law displaces state law and from the Convention’s overriding purpose of uniform,

predictable enforcement of international arbitration agreements.

This Court has held that federal common law displaces state law in an area of “uniquely federal interest” where (1) a “significant conflict” exists between an identifiable federal policy or interest and the operation of state law, or (2) the application of state law would frustrate specific objectives of federal legislation. *Boyle*, 487 U.S. at 504–08. Those requirements are met here. Uniform enforcement of international arbitration agreements is a uniquely federal interest, and applying Louisiana's anti-arbitration statute both conflicts with that interest and frustrates the Convention's central objective of uniform, predictable enforcement. *See Arrive NOLA Hotel, LLC v. Certain Underwriters at Lloyds, London*, 776 F. Supp. 3d 404, 418 (E.D. La. 2025) (applying the *Boyle* test to find that federal equitable estoppel principles apply to allow domestic insurers to enforce arbitration along with their foreign counterparts).

Congress enacted Chapter 2 of the FAA to uphold the Convention and promote national uniformity in its enforcement. *ESAB Grp.*, 685 F.3d at 378, 382–83; *InterGen*, 344 F.3d at 143–44. Allowing each state to impose its own rule for threshold questions of arbitrability would, as courts have recognized, “create an unmanageable tangle of arbitration law in the United States, lead to forum shopping, and frustrate the uniform standards” the Convention establishes. *MouseBelt Labs Pte. Ltd. v. Armstrong*, 674 F. Supp. 3d 728, 741 (N.D. Cal. 2023) (quoting *Outokumpu Stainless USA, LLC v. Converteam SAS*, No. 17-10944, 2022 WL 2643936, at *6 (11th Cir. July 8, 2022) (Tjoflat, J., concurring)). Because a uniform rule is necessary to honor the Convention's central objective

of “unify[ing] the standards by which agreements to arbitrate are observed,” *Scherk*, 417 U.S. at 520 n.15, federal common law controls whenever state law would defeat that objective. See *InterGen*, 344 F.3d at 143. Moreover, the Convention’s text directs that each contracting state “shall recognize an agreement in writing” to arbitrate, Convention art. II(1), 21 U.S.T. at 2519, and provides that for federal or non-unitary States the “obligations of the federal Government ... shall ... be the same” as for unitary ones, *id.* art. XI(a), 21 U.S.T. at 2521. Given this directive and Congress’s actions, predictable and uniform enforcement of the Convention is a federal interest.

B. Applying a state rule to a Convention agreement runs afoul of *Boyle*.

Applying a state statute to a Convention-governed agreement frustrates federal interest. La. Stat. Ann. § 22:868 prohibits the enforcement of arbitration clauses in insurance contracts, and the decision below used that state law prohibition to deny the Domestic Insurers recourse to equitable estoppel. The injury to the federal interest lies in subjecting a Convention agreement to parochial state laws. Under *Boyle*, federal common law must supply the rule of decision because applying state law frustrates the objectives of federal legislation.

Federal equitable estoppel principles would prevent Crescent from invoking the Policy’s benefits while avoiding the arbitration agreement between it and the Foreign Insurers. A nonsignatory, like the Domestic Insurers here, may enforce arbitration where the signatory “must rely on the terms of th[e] agreement in asserting its claims against the nonsignatory.” *GE Energy*, 590 U.S. at 437–38. Crescent’s coverage claims depend entirely on the Policy, so direct-benefits

estoppel applies. Federal law also estops a signatory from avoiding arbitration where it alleges “substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.” *Aggarao*, 675 F.3d at 373–74 (quoting *Brantley v. Republic Mortg. Ins. Co.*, 424 F.3d 392, 396 (4th Cir. 2005)). Crescent did just that. App. 13a, 17a.

C. The decision below applied the wrong body of law by extending a Chapter 1 rule to a Chapter 2 agreement.

The Fifth Circuit's determination that the Policy's allocation endorsement created separate contracts between the Insured and each Insurer did not relieve the panel of its obligation to identify the correct body of law. The court reasoned that, because of the separate-contracts endorsement, the Domestic Insurers' arbitration agreements lacked a foreign element and so did not fall under the Convention. App. 10a. But that conclusion does not answer the distinct question of whether federal or state law governs the equitable estoppel analysis. Rather, it placed the Domestic Insurers in the shoes of nonsignatories seeking to enforce the arbitration agreements between Crescent and the Foreign Insurers, agreements the courts below agreed fall under the Convention. App. 10a.

Having reached those conclusions, the panel was required to decide which body of law governs a nonsignatory's effort to enforce a Convention agreement. Instead, the panel followed *Town of Vinton*, which announced, in a single sentence and without analysis, that “[s]tate contract law determines whether a contract can be enforced by or against nonparties using equitable estoppel.” *Town of Vinton*,

161 F.4th at 288 (citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009)).

Arthur Andersen turned on Chapter 1’s Section 2, which “explicitly retains an external body of law governing revocation.” *Arthur Andersen*, 556 U.S. at 630–31. Chapter 2 and the Convention contain no comparable incorporation of state law. This Court has confirmed that the question remains open. *GE Energy* held only that the Convention “does not conflict with the enforcement of arbitration agreements by nonsignatories under domestic law equitable estoppel doctrines,” while expressly declining to decide “which body of law governs that determination.” *GE Energy*, 590 U.S. at 445. In short, the Fifth Circuit extended a Chapter 1 rule to a Chapter 2 agreement rather than conducting the required *Boyle* analysis.

The Seventh Circuit’s reasoning in *Kim* underscores why review is needed. *Kim* reasoned that because Chapter 2 says nothing about estoppel, 9 U.S.C. § 208 imports Chapter 1 and, through *Arthur Andersen*, state law. *Kim*, 2026 WL 2348464, at *5. However, § 208 incorporates Chapter 1 only “to the extent that [it] is not in conflict with . . . the Convention,” 9 U.S.C. § 208, and applying a state anti-arbitration statute to restrict enforcement of a Convention agreement is a conflict. *Kim*’s suggestion that any federal rule would borrow state law under *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728–29 (1979), confirms the need for review. *Kimbell Foods* adopts state law as the federal rule only where no federal uniformity interest is at stake, and the Convention’s central purpose is uniformity. *See Scherk*, 417 U.S. at 520 n.15.

The panel’s findings show why the decision is wrong. In staying the litigation, the court found that the Policy is a unified insurance agreement aimed at

providing Crescent City a seamless level of coverage, that Crescent's claims against the Domestic and Foreign Insurers rest on the same operative facts, that those claims are inherently inseparable, and that it is difficult to conceive how the litigation could not have a critical impact on the arbitration. App. 13a. Those findings both support applying a federal rule under *Boyle* and satisfy the federal equitable estoppel rule, which lets a nonsignatory compel arbitration where the signatory's claims are intertwined with, and rest on the same operative facts as, the arbitrable claims. *See Aggarao*, 675 F.3d at 373–75. Had the panel applied that federal rule rather than Louisiana law, it would have compelled arbitration of every claim. Instead, it allowed Louisiana law to frustrate the federal goal of broad enforcement of Convention-covered agreements. *See GE Energy*, 590 U.S. at 440.

III. The Question Presented Is Important, and Only This Court Can Resolve It.

A. The question recurs frequently and across industries.

In the years since *GE Energy* was decided, litigants have repeatedly invoked equitable estoppel to enforce international arbitration agreements, in and out of the insurance context. *See, e.g., Epicenter Loss Recovery LLC v. Burford Capital Ltd.*, No. 24-721, 2026 WL 810651, at *2 (9th Cir. Mar. 24, 2026) (mem.); *Anderson v. MSC Cruises S.A.*, No. 24-cv-60715, 2025 WL 957194, at *6 (S.D. Fla. Mar. 31, 2025); *MouseBelt Labs*, 674 F. Supp. 3d at 741–42. The question recurs frequently in the insurance context as numerous states and the District of Columbia prohibit or restrict arbitration agreements in insurance contracts. *See, e.g.,* Cal. Health & Safety Code § 1363.1; D.C. Code § 16-4403; Haw. Rev. Stat. § 431:10-221(a)(2); Ky. Rev.

Stat. Ann. § 417.050(2); La. Stat. Ann. § 22:868(A)(2); Md. Code Ann., Cts. & Jud. Proc. § 3-206.1(b); Miss. Code Ann. § 83-11-109; Mo. Rev. Stat. § 435.350; Mont. Code Ann. § 27-5-114(2)(c); Neb. Rev. Stat. § 25-2602.01(f)(4); Okla. Stat. tit. 12, § 1855(D); S.C. Code Ann. § 15-48-10(b)(4); S.D. Codified Laws § 21-25A-3; Va. Code Ann. § 38.2-312(2); Wash. Rev. Code § 48.18.200(1)(b).

The divergence extends beyond insurance. States apply conflicting rules for when a nonsignatory may invoke equitable estoppel at all, many rejecting or narrowing the federal concerted-misconduct theory and reaching opposite results on identical facts. *See Ervin v. Nokia, Inc.*, 812 N.E.2d 534, 541–42 (Ill. App. Ct. 2004) (declining to follow the federal concerted-misconduct rule and applying Illinois’s traditional reliance-based estoppel); *Doe v. Carmel Operator, LLC*, 160 N.E.3d 518, 525–26 (Ind. 2021) (confining estoppel to traditional reliance elements and rejecting concerted-misconduct estoppel); *Hirsch v. Amper Fin. Servs., LLC*, 71 A.3d 849, 860 (N.J. 2013) (intertwinement of claims alone insufficient to compel arbitration with a nonsignatory); *Ping v. Beverly Enters., Inc.*, 376 S.W.3d 581, 595 (Ky. 2012) (no estoppel absent misrepresentation and detrimental reliance); *In re Merrill Lynch Trust Co. FSB*, 235 S.W.3d 185, 191–94 (Tex. 2007) (refusing to recognize concerted-misconduct estoppel under Texas law); *Smith v. Mark Dodge, Inc.*, 934 So. 2d 375, 380 (Ala. 2006) (estoppel available only where the arbitration clause contemplates the nonsignatory). A nonsignatory who could compel arbitration under the federal rule cannot in these States, a result contrary to the Convention’s goal of uniform enforcement.

B. State law rules are not only inconsistent across jurisdictions but also unstable over time.

State estoppel rules are not only varied from one jurisdiction to the next, but unstable within a single jurisdiction over time due to legislative changes and judicial interpretations. An arbitration agreement that is valid when an agreement is reached can be rendered unenforceable by a later legislative session or court decision in any state, injecting instability and defeating the settled expectations on which the contracting parties relied.

The instability that state law produces is not hypothetical. It is exactly what happened here. Crescent agreed to arbitrate, the district court enforced arbitration of the entire dispute, and the parties moved forward with arbitration. Only after the Louisiana Supreme Court's intervening decision in *Police Jury* did the district court partially lift the arbitration stay and hold the same clause unenforceable as to the Domestic Insurers. The instability reached beyond this case. After the Louisiana Supreme Court's decision in *Police Jury*, insureds returned to court seeking to unwind orders that had already enforced arbitration. Courts in the same district, confronting similar facts, reached opposite results. Compare *Certain Underwriters at Lloyd's, London v. Belmont Commons LLC*, 2025 WL 239087 (E.D. La. Jan. 17, 2025), and *Apex Hosp. Grp., LLC v. Indep. Specialty Ins. Co.*, 2025 WL 457874 (E.D. La. Feb. 11, 2025) (permitting the insured to litigate against some insurers while arbitrating against others), with *Arrive NOLA Hotel, LLC v. Certain Underwriters at Lloyd's, London*, 776 F. Supp. 3d 404 (E.D. La. 2025), and *Olsen Sec. Corp. v. Certain Underwriters at Lloyd's, London*, 2025 WL 1370445 (E.D. La. May 12, 2025).

(enforcing arbitration of all claims against all insurers under federal equitable estoppel principles). The widespread conflict and its capacity to grow heighten the need for this Court's review.

CONCLUSION

The facts and procedural history of this case provide additional support for the Court's review of the question before the Court in *Indian Harbor Ins. Co. v. Town of Vinton*, No. 25-1383 — whether federal common law or state law supplies the rule of equitable estoppel when a nonsignatory seeks to enforce an arbitration agreement subject to the Convention. For the foregoing reasons, the Court should hold this petition pending its disposition of *Town of Vinton*, and then dispose of this petition as appropriate in light of that decision. If the Court concludes that *Town of Vinton* is not a suitable vehicle, it should grant this petition.

Respectfully submitted,

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September 21, 2026

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-30044

CRESCENT CITY SURGICAL OPERATING COMPANY,
Plaintiff–Appellee,

versus

INTERSTATE FIRE & CASUALTY COMPANY;
INDEPENDENT SPECIALTY INSURANCE COMPANY;
VELOCITY RISK UNDERWRITERS, L.L.C.; CERTAIN
UNDERWRITERS AT LLOYDS, LONDON, SUBSCRIBING
TO POLICY NO. VPC-CN-0002838-01, *improperly*
named CERTAIN UNDERWRITERS AT LLOYDS,
CONSORTIUM NO. 9226,
Defendants–Appellants.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:22-CV-2625

Before KING, JONES, and WILSON, *Circuit Judges.*

PER CURIAM:*

This insurance dispute arises in the wake of Hurricane Ida, a Category 4 hurricane that swept through Louisiana in August 2021. After its coverage

* This opinion is not designated for publication. See 5th Cir. R. 47.5.

claims were denied, a Louisiana hospital brought this action against its insurers, two domestic and two foreign. The district court compelled arbitration of the claims against the foreign insurers but declined to compel arbitration as to the domestic insurers. The court then refused to stay the litigation pending the foreign insurers' arbitration. All four insurers appeal.

We first determine that the foreign insurers have standing to appeal, even though they were afforded (partial) relief in the district court. On the merits, bound by Louisiana law and this court's recent precedent, we affirm the denial of arbitration as to the domestic insurers. But we conclude the district court abused its discretion by not staying the litigation pending arbitration against the foreign insurers.

I.

Plaintiff-Appellee Crescent City Surgical Operating Company (Crescent City) operates an acute care hospital in Metairie, Louisiana. To insure the hospital, Crescent City contracted for coverage with four insurers (collectively, the Insurers): two domestic companies, Independent Specialty Insurance Company and Interstate Fire & Casualty Company, and two foreign, brokered through Certain Underwriters at Lloyd's, London (the Underwriters). The Insurers agreed to provide discrete levels of coverage for Crescent City's hospital, all delineated within a single document (the Policy) administered and executed by Velocity Risk Underwriters, L.L.C.

The Policy contains two clauses at issue in this case. First, it contains an arbitration clause: "All matters in dispute between the named insured and the insurer(s) . . . in relation to this insurance, including this policy's formation and validity . . . shall be referred

to an Arbitration Tribunal” Second, it contains an allocation endorsement. That endorsement lists unique contract and policy numbers for each of the Insurers’ contracted coverage, and it states that “[t]his contract shall be constructed as a separate contract between the Insured and each of the Insurers.”

Following Hurricane Ida, Crescent City submitted a claim under the Policy for business interruption losses, totaling \$974,925.42. The Insurers, through a third-party administrator retained by Velocity, denied the claim based on its assertion that Crescent City “refused to cooperate with the Insurer[s]’ investigation.” Subsequently, Crescent City sued the Insurers in Louisiana state court, maintaining that they breached the insurance contract, failed to evaluate and adjust the claim properly and timely, and failed to pay business interruption costs. The Insurers removed the case to federal court under 9 U.S.C. § 205, which provides for removal where “the subject matter of an action or proceeding . . . relates to an arbitration agreement or award falling under the Convention [on the Recognition and Enforcement of Foreign Arbitral Awards].” *See generally* 9 U.S.C. § 201 *et seq.* (providing for enforcement of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the Convention)).

In federal court, the Insurers moved to compel arbitration, again invoking the Convention as well as the Policy’s arbitration clause. Crescent City did not oppose the motion, and the district court granted it. Four months later, the Insurers filed another motion asking the court to “enforce the arbitration agreement and appoint an arbitrator and umpire as required by the arbitration agreement.” This time, Crescent City opposed the Insurers’ motion, arguing that the

Insurers deliberately delayed the arbitration process and that the required qualifications for umpires were impossible to meet. The district court granted the Insurers' motion and provided a detailed process and timeline for the parties to select their arbitration panel.

The parties complied, and their arbitration panel then issued a scheduling order and set an arbitration hearing. Discovery and preliminary motions practice proceeded before the panel. But "days before dispositive motions were due," Crescent City sought a stay of the arbitration proceedings and filed in the district court a "motion to reopen, lift stay, reconsider/set aside orders granting motions to compel/enforce arbitration[,] and to stay proceedings" under Federal Rule of Civil Procedure 54(b).

The district court granted Crescent City's motion in part (as to the domestic insurers) and denied it in part (as to the foreign insurers). Relying on the clause in the Policy stating that the Policy constitutes separate contracts between Crescent City and each of the Insurers, the court reasoned that the Convention did not apply to the contracts between Crescent City and its domestic insurers. Because the Convention did not apply to those contracts, the court determined that they were governed by Louisiana law. And because Louisiana law does not permit the enforcement of arbitration clauses in insurance contracts, the court deemed the arbitration clause unenforceable as to the domestic contracts. *See* La. Stat. Ann. § 22:868. Further, the court determined that the domestic insurers could not rely on equitable estoppel to compel arbitration. The district court did not disturb its previous order compelling arbitration of the claims against the foreign insurers pursuant to the

Convention. But the court declined to stay the litigation against the domestic insurers pending the foreign insurers' arbitration.

The Insurers—foreign and domestic—timely appealed the district court's decision not to compel arbitration as to all claims. In this court, Crescent City moved to dismiss the Underwriters from the appeal for lack of standing. The Underwriters responded. The motion was carried with the case and we begin our discussion by addressing it.

II.

Crescent City asserts that the Underwriters, who prevailed on their motion to compel arbitration, may not now challenge the district court's favorable ruling. Crescent City also urges this court to dismiss the Underwriters' appeal because Crescent City intends to seek their dismissal with prejudice before the district court. Crescent City posits that once the Underwriters are dismissed, the arbitration "can be dissolved" because Crescent City "will not be suing, pursuing any causes of action, claims, or disputes as to [the Underwriters]."

The Underwriters contest that they were prevailing parties in the district court because that court's bifurcation of the case "obliterate[s]" their "ability to meaningfully arbitrate 'all disputes' under the Policy." They further assert that, even if they were prevailing parties, the risk of collateral estoppel and financial loss stemming from the appealed order give them appellate standing. In short, the Underwriters contend that because their motion was only partially granted—and hence partially denied—the denial of complete relief is sufficient to confer standing.

“[O]nly a party aggrieved by a judgment or order of a district court may exercise the statutory right to appeal therefrom.” *Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 333 (1980). Thus, “a prevailing party has standing to appeal only if it can demonstrate an adverse effect resulting from the judgment in its favor.” *Ward v. Santa Fe Indep. Sch. Dist.*, 393 F.3d 599, 603 (5th Cir. 2004). The Supreme Court “has clearly stated that a party is ‘aggrieved’ and ordinarily can appeal a decision ‘granting in part and denying in part the remedy requested.’” *Forney v. Apfel*, 524 U.S. 266, 271 (1998) (quoting *United States v. Jose*, 519 U.S. 54, 56 (1996)). And “courts have permitted prevailing parties to appeal unfavorable findings that may have an adverse future effect.” *United States v. Fletcher ex rel. Fletcher*, 805 F.3d 596, 602 (5th Cir. 2015) (citing *Camreta v. Greene*, 563 U.S. 692, 704 (2011)). Ultimately, under Article III, the critical question “is whether the litigant retains the necessary personal stake in the appeal.” *Camreta*, 563 U.S. at 702 (citing *Deposit Guar.*, 445 U.S. at 334).

In essence, Crescent City contends that because the Underwriters prevailed in compelling arbitration of the claims against them, they are not aggrieved by the district court’s decision and therefore cannot challenge it. We disagree. In the district court, the Underwriters sought to have the entire case arbitrated, arguing that any other result would render the Policy’s arbitration agreement “meaningless.” But the district court gave them half a loaf—determining that only the claims against the Underwriters were arbitrable and effectively bifurcating the case and allowing the litigation to proceed as to the domestic insurers. Because the Underwriters’ relief was partially denied, they are aggrieved parties. *See Forney*, 524 U.S. at 271. And because the domestic insurers’ litigation may

well have an adverse effect on the Underwriters' arbitration, the Underwriters retain a personal stake in the appeal. *See Camreta*, 562 U.S. at 702. The Underwriters therefore have standing to challenge the district court's decision, and we DENY Crescent City's motion to dismiss the Underwriters from the appeal.¹

III.

This court reviews “*de novo* the denial of a motion to compel arbitration and stay proceedings pending arbitration.” *Bufkin Enterprises, L.L.C. v. Indian Harbor Ins. Co.*, 96 F.4th 726, 729 (5th Cir. 2024) (per curiam) (internal citation omitted). “We review for abuse of discretion a district court’s determination of whether equitable estoppel may be invoked to compel arbitration.” *Id.* “To constitute an abuse of discretion, the district court’s decision must be either premised on an application of the law that is erroneous, or on an assessment of the evidence that is clearly erroneous.” *Id.*

Here, the Insurers say Crescent City’s claims against the domestic insurers should have been sent to arbitration for two reasons: The arbitration agreement (A) “is enforceable under the Convention,” even against the domestic insurers, and if not, (B) Crescent City is equitably estopped from avoiding arbitration.

¹ Our determination that the Underwriters are an aggrieved party, and so have a “statutory right” to this appeal, *see Coinbase, Inc. v. Bielski*, 599 U.S. 736, 738 (2023) (citing 9 U.S.C. § 16(a)), is fatal to Crescent City’s suggestion that the Underwriters’ standing should be mooted because “[Crescent City] wants [the Underwriters] fully dismissed from the proceedings.” The Underwriters’ right to appeal cannot be brushed aside simply because Crescent City suggests it will dismiss them on remand.

“We will apply the Convention where (1) there is an agreement in writing to arbitrate the dispute, (2) the agreement provides for arbitration in the territory of a convention signatory, (3) the agreement arises out of a commercial legal relationship, and (4) a party to the agreement is not an American citizen.” *Town of Vinton v. Indian Harbor Ins. Co.*, 161 F.4th 282, 287 (5th Cir. 2025). The first three of these conditions are undisputed and, as the district court observed, “easily met” here. The Policy contains an arbitration clause. That clause provides for arbitration to be held in the United States, a signatory nation. *See Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 339 (5th Cir. 2004). And the arbitration agreement arises out of the arrangement by which the Insurers agreed to provide coverage for Crescent City’s facility and operations—a commercial legal relationship.

The parties vigorously contest the last prong of the test, whether “a party to the agreement is not an American citizen.” *Town of Vinton*, 161 F.4th at 287. That question turns on the text and structure of the Policy and its arbitration agreement. Specifically, if there is a single arbitration agreement among five parties—Crescent City on one hand and the Insurers, including the foreign Underwriters, on the other—then all of Crescent City’s claims would be subject to the Convention, and arbitrable. But if there are four bilateral agreements to arbitrate between Crescent City and each insurer, the Convention would apply only to the claims against the Underwriters, as the district court concluded.

The Insurers read the Policy as a unified, seamless agreement entered by all parties. They interpret the arbitration clause in the same way, such that both the

foreign and domestic insurers are parties to one agreement, making all of Crescent City’s claims arbitrable under the Convention. By contrast, Crescent City points to the directive in the Policy’s allocation endorsement that the Policy is to “be constructed as a separate contract between the Insured and each of the Insurers[.]” Giving force to that provision, Crescent City reasons that the separate contracts between it and the domestic insurers do not include a noncitizen party, such that the domestic insurers cannot compel arbitration of the claims against them under the Convention. As a result, Louisiana law governs the reach of the arbitration clause, and that state’s law plainly forecloses arbitration of claims against a domestic insurance company. *See* La. Stat. Ann. § 22:868; *Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.*, 2024-00449, p. 4–17 (La. 10/25/24), 395 So. 3d 717, 721–30.

By this point, the ground contested by the parties has been well-plowed. In a series of recent cases, our court has adopted Crescent City’s reading of the Policy in analyzing materially identical insurance policies. *Town of Vinton*, 161 F.4th at 287–88; *see, e.g., Police Jury of Calcasieu Par. v. Indian Harbor Ins. Co.*, 165 F.4th 907, 908–09 (5th Cir. 2026) (applying *Town of Vinton*, 161 F.4th at 285, to “a substantively identical surplus line policy with foreign and domestic insurers”).

In *Town of Vinton*, a Louisiana town entered into an insurance policy with both foreign and domestic insurers. 161 F.4th at 285. When the parties disputed coverage, the town sued all its insurers, foreign and domestic alike, in Louisiana state court. *Id.* Once litigation was underway, Vinton dismissed the foreign insurers with prejudice, leaving only the domestic

insurers in the case. *Id.* The domestic insurers then removed the case to federal court and moved to compel arbitration under the Convention; the district court denied the motion and the insurers appealed. *Id.* Our court affirmed, concluding that the insurance policy, by its terms, consisted of separate contracts “between the insured and each of the insurers.” *Id.* at 286. This result followed from the policy’s allocation endorsement which, like the one here, stated that “[t]his contract shall be constructed as a separate contract between the Insured and each of the Underwriters.” *Id.* Because there was no noncitizen party to the arbitration agreement between the town and each domestic insurer, the Convention did not apply, Louisiana law did, and the district court properly denied arbitration as to those domestic claims. *See id.*

As in *Town of Vinton*, so here. Crescent City’s insurance policy includes substantively the same allocation endorsement as at issue in *Town of Vinton*. Per that provision’s plain text, there are four separate contracts: one between Crescent City and each of its four insurers. Following *Town of Vinton*, we agree with the district court that the Convention applies to the contracts between Crescent City and the foreign insurers, but not to the contracts between Crescent City and the domestic insurers. Accordingly, Louisiana law applies to the domestic insurers, *see* La. Stat. Ann. § 22:868, and the district court properly declined to compel arbitration as to the claims against them.

B.

As an alternative to their contractual argument, the Insurers seek to compel arbitration as to the domestic insurers via the doctrine of equitable estoppel. In Louisiana, compelling arbitration via equitable estoppel is squarely foreclosed by state law. *See* La. Stat. Ann. §

22:868; *Police Jury*, 395 So. 3d at 721–30. Nevertheless, the Insurers contend that “federal common law” should apply to these types of insurance contracts, citing our recent decision in *Bufkin*, 96 F.4th at 726, for support. But that argument “badly misreads *Bufkin*,” which “expressly relie[d]” on Louisiana law. *Town of Vinton*, 161 F.4th at 288 (citing *Bufkin*, 96 F.4th at 730). And as we explained in *Town of Vinton*, “because equitable estoppel cannot contravene Louisiana positive law, La. R.S. 22:868 precludes the use of estoppel to compel arbitration here.” *Id.* (contrasting *Bufkin* and *Police Jury*, 395 So. 3d at 729).

Again, we are bound to follow *Town of Vinton*: Equitable estoppel cannot provide a workaround for the Insurers where Louisiana statute clearly forecloses it. The district court was correct to decline to apply equitable estoppel to compel arbitration.

IV.

Even if the domestic insurers cannot compel arbitration of Crescent City’s claims against them, the Insurers assert that the district court erred in refusing to stay the litigation of those claims while arbitration involving the Underwriters is pending. On this issue, we agree with the Insurers.

Section 3 of the Federal Arbitration Act “compels [a] court to stay the proceeding” before it pending arbitration. *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024) (discussing 9 U.S.C. § 3). Generally, however, that section “only applies to parties to an agreement containing an arbitration clause.” *Rainier DSC 1, L.L.C. v. Rainier Cap. Mgmt., L.P.*, 828 F.3d 356, 360 (5th Cir. 2016). It has been extended to nonsignatories “only where: (1) the arbitrated and litigated disputes

involve the same operative facts; (2) the claims asserted in the arbitration and litigation are ‘inherently inseparable’; and (3) the litigation has a ‘critical impact’ on the arbitration.” *Id.* (quoting *Waste Mgmt., Inc. v. Residuos Industriales Multiquim, S.A. de C.V.*, 372 F.3d 339, 341 (5th Cir. 2004)). “[W]hile this court generally review[s] *de novo* a denial of a motion to stay a proceeding pending arbitration, we review whether to stay nonsignatories’ litigation for an abuse of discretion.” *Cure & Assocs., P.C. v. LPL Fin. L.L.C.*, 118 F.4th 663, 669 (5th Cir. 2024) (internal citation omitted). “To constitute an abuse of discretion, the district court’s decision must be either premised on an application of the law that is erroneous, or on an assessment of the evidence that is clearly erroneous.” *Id.*

In its order denying the Insurers’ motion for a stay, the district court recited the *Rainier* factors. But it wholly failed to apply them. Rather, the district court gave two reasons—unrelated to the *Rainier* factors—for denying a stay of the litigation pending arbitration. First, it found that “further delay” in appointing arbitrators “would unduly prejudice Crescent City” because of the “large amount of insurance proceeds in dispute and the potential further deterioration of its [p]roperty.” Second, it distinguished this case from another case pending in the Eastern District of Louisiana in which the district court stayed litigation pending this court’s ruling on the applicability of equitable estoppel as a ground for compelling arbitration. Neither of these reasons was an adequate basis for denying a stay pending arbitration in this case.

Indeed, under the *Rainier* factors, it is readily apparent that the district court misapplied the law,

and therefore abused its discretion, when it declined to stay the litigation against the domestic insurers pending arbitration. *See Cure*, 118 F.4th at 669. Crescent City's claims, in arbitration and in court, arise from the "same operative facts" under the Policy, which, though construed as a separate contract between Crescent City and each insurer, still is a unified insurance agreement with the aim of providing Crescent City a seamless level of coverage. That arrangement also makes the claims against each insurer "inherently inseparable." *See Rainier*, 828 F.3d at 360. Finally, it is difficult to conceive how the litigation could not have a critical impact on the arbitration, given that both proceedings involve the same coverage questions and the same facts. *See id.* Therefore, the district court should have stayed the litigation pending resolution of the arbitration against the Underwriters.

V.

Because the Underwriters have standing to appeal the district court's ruling partially denying the Insurers' motion to compel arbitration, Crescent City's motion to dismiss for lack of jurisdiction is DENIED.²

The district court compelled arbitration as to the foreign insurers but denied it as to the domestic insurers. That ruling rested on a correct reading of the Policy's arbitration clause, per *Town of Vinton*. Therefore, we AFFIRM the district court's order to that effect.

² Crescent City also filed an opposed motion to dismiss this appeal as frivolous and to lift the stay of the district court. This second motion to dismiss is DENIED for the reasons discussed above the line, and the motion to lift the stay is DENIED as moot.

However, it was an abuse of discretion to deny the Insurers' motion to stay this litigation pending arbitration of Crescent City's claims against the foreign insurers. Accordingly, we VACATE the district court's order denying a stay and REMAND with instructions for the district court to stay further proceedings pending arbitration.

15a

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 22-2625

Section L(1)

CRESCENT CITY SURGICAL OPERATING COMPANY

versus

CERTAIN UNDERWRITERS AT LLOYD’S, LONDON, *et al*

ORDER & REASONS

Pending before the Court is a Motion to Reconsider and Set Aside Orders Granting Motions to Compel Arbitration and Stay Proceedings filed by Plaintiff Crescent City Surgical Operating Company (“Crescent City”). R. Doc. 43. The Defendants, four insurance companies, oppose the motion. R. Doc. 48. Crescent City replied. R. Doc. 56. Considering the record, briefing, and applicable law, the Court now rules as follows.

I. BACKGROUND

This case arises from alleged damage to Plaintiff Crescent City’s commercial property (the “Property”) during Hurricane Ida, which was insured at the time by a domestic insurer called Independent Specialty Insurance Company (“Independent Specialty”);¹ another domestic insurer called Interstate Fire & Casualty

¹ Independent Specialty is a U.S. insurance company with its principal place of business in Bedford, Texas. R. Doc. 1-5 at 7.

Company (“Interstate Fire”);² and two foreign insurers through the Lloyd’s of London insurance market (collectively, the “Insurers”). R. Doc. 1-2 at 2. Each of these insurers issued separate policies of insurance covering the Property, which are contained in a single document that was managed and executed by Velocity Risk Underwriters, LLC (the “VRU Policy”). R. Doc. 1-5 at 66. The VRU Policy provides that the two domestic insurers, Interstate Fire and Independent Specialty, were collectively responsible for 68% of the named business interruption coverage, while the two international corporate entities providing coverage vis-à-vis their membership in syndicates organized under the Lloyd’s insurance market were responsible for the remaining 32%.³ *Id.* at 65.

On June 28, 2022, Crescent City filed the instant lawsuit in state court against the domestic and international insurers as well as Velocity Risk Underwrit-

² Interstate Fire is a U.S. insurance company with its principal place of business in Chicago, Illinois.

³ The Court recognizes Lloyd’s of London is not an insurer *per se*. Rather, it is an international insurance market in London, England, that provides the infrastructure for entities, called names or members, to insure a portion of a risk instead of insuring the entire risk itself. *See Underwriters at Lloyd’s, London v. Osting-Schwinn*, 613 F.3d 1079 (11th Cir. 2010). These members subscribe to the risks through syndicates, which are administrative entities. *Id.* Here, only two members insured the policy through the Lloyd’s insurance market. R. Doc. 1 at 3. Nephila 2357 Ltd. is a private limited company incorporated under the laws of England and Wales that subscribed to the VRU Policy through Syndicate 2357. *Id.* RenaissanceRe Corporate Capital (UK) Limited is also a private limited company incorporated under the laws of England and Wales that subscribed to the VRU Policy through Syndicate 1458. *Id.*

ers.⁴ R. Doc. 1-2. It alleges that as a result of Hurricane Ida, it suffered both property damage and a significant loss of business earnings/payroll expenses purportedly covered by the VRU Policy.⁵ *Id.* at 2. Crescent City avers that it provided satisfactory proof of loss to the Insurers after the storm, but they have continually failed to pay for the covered loss. *Id.* Accordingly, Crescent City asserts that the Insurers are liable for their (1) breach of insurance contract under Louisiana law, (2) failure to properly evaluate and timely adjust the claim, and (3) failure to pay business interruption costs. *Id.* at 3. The Insurers subsequently removed the matter to this Court on the basis of diversity jurisdiction. R. Doc. 1. After the case was removed, the Insurers filed an unopposed motion to compel arbitration pursuant to the VRU Policy's arbitration clause and requested a stay of the litigation. R. Doc. 9. This Court ultimately granted the motion on January 27, 2023 and stayed the matter pending the outcome of the mandated arbitration proceedings. R. Doc. 23.

In May of 2024, the Insurers filed another motion asking this Court to enforce the arbitration agreement and appoint an arbitrator and umpire as required under the arbitration agreement. R. Doc. 28-1 at 1. Crescent City opposed the motion. R. Doc. 29-1 at 2, 14. It argued the Insurers had deliberately delayed the arbitration in bad faith by refusing to agree to its proposed arbitrator and umpires, and that such

⁴ The Insurers asserted in their Notice of Removal that Velocity Risk Underwriters is improperly joined in this suit because it is not considered an insurer under the VRU Policy. R. Doc. 1 at 10. However, Velocity has not yet been dismissed from the case.

⁵ Crescent City estimates that its loss of earnings totals \$974,925.42 due to the closure of its business from August 30, 2021 to September 13, 2021. R. Doc. 1-1 at 2.

objections rendered the arbitration clause incapable of being performed. *Id.* at 3. As such, Crescent City asked this Court to deny the Insurers' motion and lift the stay in the case. *Id.* at 21; R. Doc. 32. After hearing oral argument on the matter, the Court granted the Insurers' motion and provided the parties with a detailed process and timeline to select the remaining members of the arbitration panel. R. Doc. 38. Since the issuance of this order on June 28, 2024, it appears the parties have successfully agreed upon Crescent City's arbitrator and umpire selections and are in the midst of the arbitration process. R. Docs. 43-2, 48. Crescent City, however, recently requested and obtained a stay of the ongoing arbitration proceedings to file the present motion. R. Doc. 48. at 2.

II. PRESENT MOTION

Crescent City now moves this Court to vacate its January 27, 2023 order compelling arbitration and staying the case, pursuant to Federal Rule of Civil Procedure 54(b). R. Doc. 43-2. It argues that the Louisiana Supreme Court's recent ruling in *Police Jury of Calcasieu Parish v. Indian Harbor Insurance Co.* constitutes an intervening change in the law clarifying that arbitration clauses in a contract for surplus line insurance, such as the clause in the present case, are void under Louisiana Revised Statute § 22:868. *Id.* at 5. Accordingly, it contends that arbitration is no longer warranted at least against the domestic insurers, and that this action must properly proceed in this Court. *Id.* at 8. In support, Crescent City cites another section of this Court's recent ruling in *Jay VMK, LLC v. Independent Specialty Insurance Co., Inc.* that expressly adopted *Police Jury* and declared an arbitration clause similar to the one in the

VRU Policy ineffective as to the domestic insurers. *Id.* at 7-8.

The Insurers oppose the motion on three separate grounds. R. Doc. 48. First, they argue that the arbitration provision contained in the VRU Policy remains enforceable under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”), an international treaty that establishes uniform standards for enforcing foreign arbitration awards and agreements. *Id.* at 12-13, 15. Second, the Insurers contend that Crescent City is “estopped” from avoiding its agreement to arbitrate by litigating against the domestic insurance companies under federal common law. *Id.* at 15-18. Third, the Insurers assert that even if the applicable arbitration clause is deemed unenforceable, a stay of the entire case would still be warranted because “the liability of the insurers is inherently inseparable and based on the same operable facts.” *Id.* at 18-19. They thus take the position that allowing parallel proceedings could potentially destroy the international Insurers’ right to a “meaningful arbitration.” *Id.* In reply, Crescent City argues that the Insurers improperly rely on Fifth Circuit case law that predates the Louisiana Supreme Court’s decision in *Police Jury* and that it is now settled law that “equitable estoppel” cannot provide a basis for mandating arbitration with respect to domestic insurers. R. Doc. 56 at 8-10, 20.

Before proceeding, the Court notes that the only question posed in this case is whether Crescent City must arbitrate its claims against the *domestic* insurers – Interstate Fire and Independent Specialty. The Fifth Circuit has made clear that in contracts involving foreign parties, the Convention preempts state law and requires the enforcement of arbitration

clauses. *Safety Nat'l Cas. Corp. v. Certain Underwriters at Lloyd's London*, 587 F.3d 714, 718 (5th Cir. 2009). Although not stated directly, Crescent City seemingly does not dispute that it must arbitrate any claims against the foreign insurers. Indeed, it writes in its reply that if this Court vacates its order and lifts the stay, it can then “file a motion to dismiss [D]efendant Lloyd’s, the only non-domestic insurer herein, and set this matter for a status conference.” R. Doc. 56 at 21. The Court will thus proceed accordingly.

III. APPLICABLE LAW

Rule 54 provides that district courts “possess[] the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient.” *Melancon v. Texaco*, 659 F.2d 551, 552 (5th Cir. 1981). Under such a standard, district courts can be “more flexible, reflecting the inherent power of the rendering district court to afford such relief from interlocutory judgments as justice requires.” *Austin v. Kroger Tex., L.P.*, 864 F.3d 326, 336-37 (5th Cir. 2017). Relevant considerations when ruling on a Rule 54(b) motion include “(1) an intervening change in the controlling law, (2) the availability of new evidence not previously available, or (3) a manifest error in law or fact.” *Henry v. New Orleans La. Saints, L.L.C.*, No. 15-5971, 2016 WL 3524107, at *2 (E.D. La. June 28, 2016). Courts may also grant reconsideration when “necessary to prevent manifest injustice.” *Fields v. Pool Offshore, Inc.*, No. 97-3170, 1998 WL 43217, at *2 (E.D. La. Feb. 3, 1998).

IV. LAW & ANALYSIS

Crescent City’s motion raises three issues that this Court must address in determining whether to reopen

this case and lift the stay currently imposed. The Court takes each in turn.

A. The Agreement Is Not Enforceable Under the Convention With Respect to the Domestic Insurers.

First, the Court addresses the Insurers' contention that the instant arbitration clause contained in the VRU Policy is enforceable against both the foreign *and* domestic insurers because it falls under the Convention.

1. The Court Will Apply the Fifth Circuit's Four-Prong Convention Analysis.

The Convention is an international treaty with "the principal purpose . . . to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced by the signatory countries." *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 520 n.15 (1974). In 1970, the United States acceded to the treaty through the Convention Act, which was subsequently implemented by Chapter 2 of the Federal Arbitration Act (the "FAA"). *Johnson v. NCL (Bahamas) Ltd.*, 163 F. Supp. 3d 338, 352 (E.D. La. 2016). The Convention requires contracting states, including the United States, to recognize certain written arbitration agreements:

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.

The Convention, Article II(1). The Article thereafter defines “agreement in writing” to include “an arbitral clause in a contract or an arbitration agreement signed by the parties or contained in an exchange of letters or telegrams.” *Id.*

In applying the Convention, the Fifth Circuit has held that it “contemplates a very limited inquiry by courts when considering a motion to compel arbitration.” *Sedco, Inc. v. Petroleos Mexicanos Mexican Nat'l Oil Co.*, 767 F.2d 1140, 1144–45 (5th Cir.1985). Accordingly, district courts should only compel arbitration if the following four-prong test is met: (1) there is a written agreement to arbitrate the matter; (2) the agreement provides for arbitration in a Convention signatory nation; (3) the agreement arises out of a commercial legal relationship; and (4) a party to the agreement is not an American citizen. *Francisco v. Stolt Achievement MT*, 293 F.3d 270, 273 (5th Cir. 2002).

Here, the Court finds that the first three prongs are easily met. First, the VRU Policy’s arbitration provision constitutes a written agreement to arbitrate the parties’ legal disputes related to the policy under New York law. Second, the VRU Policy indicates arbitration is to take place in the United States, a signatory of the Convention. Third, the parties’ agreement to arbitrate arises out of a surplus line insurance contract that provides property damage and loss of profits coverage to Crescent City presumably related to its business as a medical care facility. *See Francisco*, 293 F.3d at 273 (citing 9 U.S.C. § 202 *et seq.*) (defining a commercial legal relationship as any transaction, contract, or agreement involving commerce or

maritime activates or a contract involving commerce). However, because two of the insurers subject to the arbitration provision—Independent Specialty and Interstate Fire—are considered U.S. insurance companies, it is less clear whether the fourth prong requiring at least one foreign citizen be a party to the agreement can be met.

2. Crescent City’s Agreements to Arbitrate With the Domestic Insurers Do Not Fall Under the Convention Because There is No Important Foreign Element as Required by Fifth Circuit Jurisprudence.

As an initial matter, the Court notes that although the parties’ terms of coverage are consolidated into a single policy document, the VRU Policy explicitly provides that “[t]his contract shall be constructed as a separate contract between the Insured and each of the Insurers.” R. Doc. 1-5 at 66. It further states that “evidence of coverage does not constitute in any manner or form a joint certificate of coverage by Underwriters at Lloyd’s with any other insurance company(ies).” *Id.* Essentially, these contractual provisions require the Court to construe the VRU Policy’s arbitration clause as separate, distinct agreements to arbitrate between Crescent City and each insurer. This interpretation of the policy is crucial to the fourth prong’s analysis because as separate contracts, Crescent City’s independent agreements to arbitrate with each of the domestic insurers respectively are entirely between United States’ citizens, separate and apart from its agreement to arbitrate with the foreign insurers that subscribed to the policy vis-à-vis Lloyd’s. This is troublesome for the Insurers’ position because the fourth prong of the Convention analysis seemingly contemplates the presence of at least one foreign

citizen to an arbitration agreement for the treaty to apply.

However, the Fifth Circuit in *Freudensprung v. Offshore Technical Services, Inc.* held that the mere lack of a foreign citizen as a party to an arbitration agreement does not render the Convention inapplicable *per se*. 379 F.3d 327, 339-340 (5th Cir. 2004) (“[W]e must further examine whether the lack of a foreign citizen as a party to the agreement renders the Convention inapplicable. We conclude it does not.”). In reaching its decision, the court recognized that Section 202 of the FAA expressly allows for arbitration agreements wholly between two U.S. citizens to fall under the Convention when the commercial relationship: (1) “involves property located abroad,” (2) “envisages performance or enforcement abroad,” or (3) “has some other reasonable relation with one or more foreign states.” *Id.* at 340. Further, the court cited Second and Seventh Circuit case law agreeing that the Convention may apply in such cases provided that there is some “important foreign element.” *Id.* at 340-41 (discussing the implications of *Jones v. Sea Tow Servs., Inc.*, 30 F.3d 360, 366 (2d Cir.1994 and *Lander Co. v. MMP Investments, Inc.*, 107 F.3d 476, 481 (7th Cir. 1997)). But the court clarified that the “reasonable connection between the parties’ commercial relationship and a foreign state . . . [must be] independent of the arbitral clause itself.” *Id.* at 341. Accordingly, the fourth prong of the Convention analysis may still be met without a foreign party to the arbitration agreement in scenarios where the underlying contract has sufficient ties to the international sphere enumerated in Section 202. *Id.*; see also *1010 Common, LLC v. Certain Underwriters at Lloyd’s, London*, No. CV 20-2326, 2020 WL 7342752, at *4 (E.D. La. Dec. 14, 2020) (holding agreements between United States citizen

may fall under the Convention pursuant to Section 202 of the FAA).

Here, the Insurers acknowledge that the VRU Policy contemplates separate contracts between Crescent City and each insurer. However, they contend that the divided structure of the policy is immaterial because Crescent City's agreements to arbitrate with the two domestic insurers have a "rational relationship" to a foreign state, namely the United Kingdom. As such, the Insurers assert that the fourth prong of the Convention analysis is met and that the domestic insurers should still be compelled to arbitrate in light of *Freudensprung* and the statutory text of 9 U.S.C. § 202. The Court disagrees.

The VRU Policy is devoid of an "important foreign element" that warrants the import of the Convention in an entirely domestic context for the following reasons. First, the commercial relationship at issue is two sets of insurance contracts between U.S. companies involving property located in the United States, not a foreign territory. Second, the VRU policy does not "envisage" performance of any kind abroad; rather, a U.S. company managed both payment of the premiums and coverage under the policy. Third, the VRU Policy provides that the domestic insurers supplied a majority of the coverage to Crescent City, while the Lloyd's syndicates were only allocated 32% of the risk. Fourth, the Insurers' assertion that the VRU "would not exist if it were not for the foreign insurers and the Lloyd's of London marketplace" is without merit. There is simply no proof of this, given Independent Specialty and Interstate Fire did not use Lloyd's to subscribe to policy, and as noted above, the foreign insurers only cover a portion of the risk. Essentially, the only foreign element present here is the fact that Crescent City's

insurance contracts (and thus their corresponding agreements to arbitrate) with the domestic insurers and foreign insurers are all contained in the same VRU Policy. However, the Court concludes that the mere consolidation of separate insurance contracts into a single policy document that just so happens to include a foreign insurer is insufficient to prove a “reasonable relationship” to a *foreign state* worthy of subjecting a domestic insurer to the Convention. *See Freudensprung*, 379 F.3d 327 at 340. The Insurers fail to cite, nor could the Court find, any case law that stands for the proposition that the existence of a similar but wholly separate agreement to arbitrate with a foreign insurer is enough to warrant the application of the Convention to an arbitration agreement with a domestic insurer. Such a holding would have sweeping effects on the insurance industry writ large and expand the scope of the Convention, which was enacted to promote uniformity in the *international* context, not the *domestic*.

The Court further disagrees that just because the foreign insurers subscribed to the VRU Policy vis-à-vis the Lloyd’s of London insurance market, there is a “reasonable relation” to a foreign state that justifies applying the Convention to the domestic insurers. Specifically, the Court finds that the Insurers have misread and thus improperly based this argument off of an unpublished decision from the Western District of Washington, *CLMS Management Services Limited Partnership v. Certain Underwriters at Lloyd’s, London*. No. 3:19-CV-05785-RBL, 2019 WL 7185547 (W.D. Wash. Dec. 26, 2019), *aff’d*, 8 F.4th 1007 (9th Cir. 2021). In that case, the only question before the district court was whether the insurers subscribing to the policy through Lloyd’s were subject to the Convention even though “the Policy itself [did] not identify where

each syndicate is from.” *Id.* at *6. In analyzing the fourth prong of the Convention analysis, the court held that ascertaining the domiciliary status of each member of the syndicates was not required because a reasonable relationship existed between the insurance contract and the United Kingdom, given the Lloyd’s insurance market was used to underwrite the whole policy. *Id.* The Court thus compelled arbitration pursuant to the Convention as to all the foreign entities providing coverage through Lloyd’s. *Id.* Applying this rationale to the present case, it is clear *CLMS Management* is inapposite. Plaintiff appears to recognize that it must arbitrate its claims with all entities who underwrote the policy through Lloyd’s syndicates. Rather, this dispute is about whether Independent Specialty and Interstate Fire, as domestic insurers that did not provide coverage through Lloyd’s, can be compelled to arbitrate under the Convention. The foreign insurers’ independent decision to engage with a foreign insurance market has no bearing on the domestic insurers separate contracts with Crescent City.

Therefore, the Court finds that Crescent City cannot be compelled to arbitrate its claims against Independent Specialty and Interstate Fire through the Convention.

B. The Arbitration Clause in the VRU Policy Is Null and Cannot Be Enforced Under Principles of Equitable Estoppel Per *Policy Jury*.

Next, the Court addresses whether Crescent City is estopped from litigating its claims in light of the Louisiana Supreme Court’s recent decision in *Police Jury of Calcasieu Parish v. Indiana Harbor Ins. Co.*

2024-00449 (La. 10/25/24), 395 So. 3d 717, 722-25, *reh'g denied*, 2024 00449 (La. 12/12/24).

1. The Key Takeaways from *Police Jury*

When the Convention applies, it preempts inconsistent state law and renders arbitration agreements valid. However, where the Convention does not apply, state law may operate to invalidate arbitration agreements in insurance contracts. *See Safety Nat'l*, 587 F.3d 714 (holding that state law “reverse preempts” the FAA pursuant to the McCarran-Ferguson Act). With this in mind, the Court now turns to a discussion of *Police Jury*. There, the Louisiana Supreme Court reached two distinct holdings. First, the court clarified that § 22:868(A) still operates to invalidate arbitration clauses in insurance contracts. *Police Jury*, 395 So. 3d at 722-25. This holding interpreting Louisiana law clearly abrogates prior, inconsistent Fifth Circuit case law which made an *Erie* guess as to this issue. *JAY VMK, LLC v. Indep. Specialty Ins. Co., Inc.*, No. CV 23-720, 2024 WL 4855525, at *2 (E.D. La. Nov. 21, 2024) (“Where the Fifth Circuit provided merely the guidance of an *Erie* guess, the Louisiana Supreme Court subsequently answered the question.”). In the present case, it appears the Insurers concede this point as they fail to make a challenge on such grounds in their briefing.

Second, the court addressed whether plaintiffs could be required to arbitrate their claims against domestic insurers through principles of equitable estoppel. *Id.* at 728-30. Notably, just prior to the ruling in that case, the Fifth Circuit issued an opinion in *Bufkin Enterprises LLC v. Indian Harbor Insurance Co.* that held that the doctrine of “equitable estoppel” could be used to enforce foreign insurers’ Convention-protected arbitration agreements against non-party domestic

insurers. 96 F.4th 726, 731-32 (5th Cir. 2024). However, *Police Jury* expressly disagreed with the Fifth Circuit’s application of equitable estoppel to bring domestic insurers into the ambit of the Convention. 395 So. 3d at 729 (“With all due respect, we disagree with the Federal Court’s recent per curiam in *Bufkin*.”). It observed that “[e]stoppel is not favored in our state’s Civil Law System; rather, it is a doctrine of last resort.” *Id.* As a disfavored doctrine, the court observed that “estoppel cannot prevail when in conflict with our state’s positive written law.” *Id.* And, the court continued, “[t]he *Bufkin* court failed to acknowledge that Louisiana has positive law” on this issue: § 22:848’s prohibition of arbitration clauses in insurance contracts. *Id.* Therefore, the court reasoned, a domestic insurer “*may not* resort to equitable estoppel under state law to enforce an arbitration clause in another insurer’s policy in contravention of the positive law prohibiting arbitration in La. R.S. 22:868(A)(2).” *Id.*

2. Based on this Court’s Recent Ruling in *Belmont*, the Doctrine of Equitable Estoppel Cannot be Used to Enforce Crescent City’s Arbitration Agreements with the Domestic Insurers.

Here, the Insurers argue that the Fifth Circuit’s decision in *Bufkin* controls over *Police Jury* and that principles of equitable estoppel under federal common law require Crescent City be estopped from avoiding its agreement to arbitrate. Crescent City asserts that *Police Jury* controls because equitable estoppel is a state law concept and its application to insurance contracts issued in Louisiana is thus ultimately a state law issue.

Given this Court's recent decision in *Certain Underwriters at Lloyd's London v. Belmont Commons, LLC*, 22-CV-3874, R. Doc. 78, the Court agrees with Crescent City. On facts substantially similar to those presently before the Court here, this Court assessed the applicable Supreme Court and Fifth Circuit case law and reached the following ruling:

Overall, the Court concludes that whether a plaintiff can be compelled to arbitrate with a domestic insurer based on the plaintiff's arbitration agreement with a foreign insurer is a matter of state law, not federal law. *Outokumpo* compels this conclusion. 590 U.S. at 437. Further, the Fifth Circuit has clearly stated that whether a "non-signatory to an arbitration agreement may compel a signatory to that agreement to arbitrate" through "equitable estoppel" is a matter of "state contract law" and not "federal common law." *Crawford*, 748 F.3d at 262. This precedent is applicable to the instant Convention case. *See Todd*, 601 F.3d at 334–35. . . . Accordingly, the Court concludes that equitable estoppel is governed by state law.

This determination dictates the Court's conclusion that the Louisiana Supreme Court, rather than the Fifth Circuit, controls on the issue of estoppel. *See Ward v. State Farm Mut. Auto. Ins. Co.*, 539 F.2d 1044, 1050 (5th Cir. 1976) ("[T]he Supreme Court of Louisiana [] is the ultimate authority on questions of state law."). And the Louisiana Supreme Court, in *Police Jury*, unambiguously rejects the use of equitable estoppel to subject domestic insurers to the Convention. 395 So. 3d at 729. As

such, the Court must agree with Plaintiffs that *Police Jury* . . . represents an “intervening change in the controlling law.” Thus, the Court finds that reversal of its prior decision compelling Plaintiff to arbitrate its disputes with the nine domestic insurers is warranted. *See* Fed. R. Civ. P. 54(b).

Accordingly, the Court finds no reason to depart from its holding in *Belmont* and affirms that *Police Jury* constitutes an “intervening change in the controlling law.” The Court thus concludes that a reversal of its prior decision compelling Crescent City to arbitrate its disputes at least as it relates to Independent Specialty and Interstate Fire as domestic insurers is warranted. *See* Fed. R. Civ. P. 54(b).

C. The Court Will Not Issue a Discretionary Stay.

Lastly, the Insurers argue that even if Crescent City cannot be compelled to arbitrate with the domestic insurers, the Court should exercise its discretion to stay the litigation pending conclusion of the arbitration proceedings against the foreign insurers. District courts have “broad discretion” to “stay proceedings in the interest of justice and in control of their dockets.” *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 545 (5th Cir. 1983). “The party seeking a stay bears the burden of justifying a delay tagged to another legal proceeding.” *Id.* “Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Landis v. North Am. Co.*, 299 U.S. 248, 255 (1936). Factors the court considers include whether 1) the arbitrated and litigated disputes must involve the same operative facts; 2) the claims asserted in the arbitration and litigation must be “inherently

inseparable”; and 3) the litigation must have a “critical impact” on the arbitration. *Waste Mgmt., Inc. v. Residuos Industriales Multiquim, S.A. de C.V.*, 372 F.3d 339, 343 (5th Cir. 2004). Finally, “before granting a stay pending the resolution of another case, the court must carefully consider the time reasonably expected for resolution of the other case.” *Wedgeworth*, 706 F.2d at 545. Ultimately, it is the Court’s duty to “weigh competing interests and maintain an even balance.” *Landis*, 299 U.S. at 255.

Here, the Insurers assert that allowing Crescent City to proceed with the litigation could destroy the foreign insurers’ right to a meaningful arbitration and urge this Court to continue the stay of the entire case while the Fifth Circuit decides the issues at bar. Such a request requires this court to balance the foreign insurer’s right to arbitrate meaningfully with Crescent City’s right to litigate against the domestic insurers. The Court concludes that the balance of hardships weighs against a discretionary stay of the litigation. First, the Court notes that the parties’ have struggled in appointing an arbitration panel over a two year period. The imposition of yet further delay, the Court finds, is too great and would unduly prejudice Crescent City given the large amount of insurance proceeds in dispute and the potential further deterioration of its Property. *Landis*, 299 U.S. at 255. Second, the Court recognizes another section of this Court opted to stay a case involving an insurance dispute on similar facts. *Southland Square Apartments, LLC v. Certain Underwriters at Lloyd’s London*, No. CV 23-2329, 2024 WL 5086081, at *3 (E.D. La. Dec. 12, 2024). In that case, the court found a stay preferable, so that it could wait for the Fifth Circuit to address the applicability of equitable estoppel to arbitration clauses in light of *Police Jury. Id.* at *3. But

here the Court has expressly agreed with *Police Jury* and waiting on a circuit decision is not required. Accordingly, the Court will not enter a discretionary stay in the case and allow Crescent City to litigate its claims against the domestic insurers.

V. CONCLUSION

For the foregoing reasons;

IT IS HEREBY ORDERED that Crescent City's Motion to Reconsider, R. Doc. 43, is GRANTED in part and DENIED in part. The Court will lift the stay and allow Crescent City to litigate its claims only as to the domestic insurers. Crescent City's agreement to arbitrate with the foreign insurers falls under the Convention and thus remains enforceable. *See Noble Cap. Fund Mgmt., LLC v. US Cap. Glob. Inv. Mgmt. LLC*, No. 1:20-CV-1247-RP, 2023 WL 4118570, at *9 (W.D. Tex. June 22, 2023) (allowing claims against some defendant proceed in court, while claims against others must be arbitrated).

New Orleans, Louisiana, this 17th day of January, 2025.

/s/ [Illegible]
United States District Judge

APPENDIX C**Federal Arbitration Act (FAA)****9 U.S.C. § 201. Enforcement of Convention**

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

9 U.S.C. § 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

9 U.S.C. § 203. Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S.C. § 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

9 U.S.C. § 205. Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

9 U.S.C. § 206. Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

9 U.S.C. § 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. § 208. Application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States. This chapter applies to the extent that this chapter is not in conflict with chapter 4.

APPENDIX D

**Convention on the Recognition and Enforcement
of Foreign Arbitral Awards, June 10, 1958,
21 U.S.T. 2517 (New York Convention),
Articles II(1)-(3), XI(a)**

Article II

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.
2. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
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 null and void, inoperative or incapable of being performed.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;